93050

Vol. III

103

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]101

THE COCA-COLA COMPANY, PETITIONER,

vs.

THE KOKE COMPANY OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 30, 1919.

CERTIORARI AND RETURN FILED JULY 21, 1919.

(27,093)

INDEX TO VOL. III.

	Page.
Testimony of D. P. English	801
E. Ewer	807
D. R. Keyser	809
George C. Kershaw	811
Tony Giarraputo	814
W. H. Ramsey	820
F. W. Hayden	821
J. B. Smith	823
C. E. Flag	826
Peter Camarinos	827
B. N. Harris	828
F. J. Britton	829
B. W. Fuller	833
Sam Friend	836
T. C. Lupton (recalled)	854
Stipulation as to testimony	856
Testimony of Wm. G. Mansfield	859
George H. Wilkins	863
Phillip Jansen	893
Edward T. Langan	895
L. Laurion	900
Charles E. Caspari	901
John A. Wesener	922
John F. Queeny	933
John W. Rossiter	935
Phillip Jansen (recalled)	937
Stipulation as to evidence	966
Testimony of Henry Boerger	967
J. M. Wheeler	970
E. W. Freeman	973
R. F. Zimmerman	978
A. F. Ensinger	984
Tom Collins	988
Joe Quinn	991
F. E. Hooper	997
M. J. Costello	999
A. W. Stanley	1003
Burton Jones	1005
R. L. Wayman	1015
C. P. Embrey	1018
C. H. Crimm	1038
W. F. Strickland	1049
C. H. Jouett	1051
Luke Pogue	1060
Dr. H. O. Null	1062

Page.

Testimony of J. C. McDonald..... 1067
F. M. Bogart..... 1070
W. F. Boylin..... 1072
Adam Diehl..... 1082
John D. Fletcher..... 1089
Wm. F. Davis..... 1101
Sumner Fuston..... 1110
Paul E. Webb..... 1119
Brants Darden..... 1123
John D. Fletcher..... 1127
John R. Pardue..... 1133
W. F. Boylin..... 1144
Max Bloomstein..... 1145
P. E. Johnson..... 1151
J. E. Dunn..... 1157
W. W. Randolph..... 1160
W. M. Sidebottom..... 1163
J. M. Warren, Jr..... 1166
J. B. Booth..... 1169
J. B. Freed..... 1171
J. M. Smith..... 1182

Deposition of D. P. English, for Plaintiff.

D. P. ENGLISH.

Direct Examination by General CRANE.

I am in the drug business and am a dealer in "Coca-Cola," located at 1333 Peak Street, Dallas, Texas. I have been in business since December first, but have been in Dallas, Texas, since 1900. I have been dispensing "Coca-Cola" at other places in Dallas before beginning at my present place, and have heard customers calling for it frequently during that time. Yes, sir, I know under what different names they call for it; some call for "coke," some "dope," some call it "shot in the arm" and various other names. A good many of them call for it under the name of "coke." I couldn't say exactly how long I had been hearing them call for it as "coke," but I should say some six or eight years, probably eight or ten years. No, I don't know just how long ago the Koke Company of Texas started business in Dallas, only I know that about two years ago, seems to me like, the first I knew of them being very prominent. My customers called for "Coca-Cola" under the name of "coke" long before that. I have served them with "Coca-Cola" when they called for "coke" and have never had them complain at it or say that they wanted anything else. Yes, sir; I suppose they did know what I was serving—well, no doubt they did. You ask if I have ever served any other commodity that was known as "coke" at my soda-fountain; well, in some instances I have served

(Deposition of D. P. English.)

it, yes, sir. When I was with the Palace Drug Company. In my own business, however, I have never served anything but "Coca-Cola." I have never had anything else in the store but "Coca-Cola," and when my customers called for "coke" I served them nothing but "Coca-Cola" under those calls. I was with the Palace Drug Company for several months. They handled "Koke" and I think they handled it exclusively. I don't think they handled any "Coca-Cola," I never knew of them buying any while I was there. They got this product "Koke" to which I refer, from the Koke Company in Dallas, Texas, in barrels, colored red. There was very little difference between their barrels and the "Coca-Cola" barrels, you would not notice it without examining the "Koke" and saw if the "Koke" label was on the end. You ask what label would be on the end instead of the "Coca-Cola" label; I couldn't tell you about that, I don't remember. [649] When people come into the Palace Drug Store and called for "Coca-Cola" they would serve them "Koke." I never heard them advise them that it was not "Coca-Cola." That practice continued in the Palace Drug Store for about three or four months, I think, in 1913 and ceased when Messrs. Florence & Nossick got it. Before the latter gentlemen got hold of the business, Pyle was manager of it. I don't know who were its owners, it was a stock company. This new concern bought it out, I believe, about the 15th of July, 1913, and they immediately went to ordering "Coca-Cola." I left

(Deposition of D. P. English.)

there on the first of December, so I don't know anything about their business since then.

Cross-examination by Mr. DART.

I was with the Palace Drug Company from May 1st to December 1st, 1913, and during that time I don't know of their ordering any "Coca-Cola." They carried "Koke," I know, I remember that. I believe they did serve "Koke" all the time, if they had any "Coca-Cola" in there I never did know anything about their ordering it. I am sure they didn't. No, sir; I was not in the accounting department. I was prescription clerk. The part of the store which I occupied was the prescription department, the majority of the time, and I was *all* in the store part of the time. Yes, sir, the prescription department is in the rear of the store and as a rule I was not visible while making prescriptions—I made them behind the counter—behind the department a great deal of the time. I had nothing to do with the fountain department, at all. Yes, sir; I served drinks there. In the mornings, before the other men got down, I served a good many drinks. Sometimes I would be asked for "Coca-Cola" when I was serving at the fountain. No, sir; I was not asked for "coke" all the time. Yes, sir; I mean to say that I served "Koke" to those people for "Coca-Cola." You ask who told me to do that; it was put in the jar and labeled that and it was their method of doing business, it wasn't my business to get up and publish these things, I was paid to sell a man this stuff and I would just sell it. It was the busi-

(Deposition of D. P. English.)

ness of the Palace Drug Company, I was just working for them. You ask what I know of their methods; well, I know they had the jar labeled "Coca-Cola"—I know they wouldn't expect me to get up and go ahead [650] and explain that it wasn't "Coca-Cola," I noticed the fountain-men didn't do it, if that had been their intention, or if they wanted it done they would have notified me. Yes, sir; I did see a jar labeled "Coca-Cola." I am sure they did have such a jar and I am sure it contained "Koke." No, sir; I did not put it there, the negro brought it from the basement up there himself. You say that I don't know what was in there myself personally and you ask if I ever tasted it; yes, I tasted it. You ask if it was "Koke" or "Coca-Cola"; well, it tasted—they are very similar in taste. No, I do not know the taste of both, I doubt if I could tell them apart, I don't drink but very little. Yes, sir; I have drunk "Coca-Cola" in my life time, but I haven't kept count of the number of drinks, I didn't know it was necessary. I drank "Koke" a good many different times, I couldn't tell you how many different times of that, either. You ask how often I served behind the counter; I would open the store every other morning and I would be there usually about twenty minutes before any of the other clerks got down and people would call in and ask for "Coca-Cola" and I would serve them. I don't know how many men came in and asked for "Coca-Cola," I didn't keep tab. You ask if I am willing to swear that anybody ever came and called for "Coca-

(Deposition of D. P. English.)

Cola" while I was behind the counter; yes, sir. You ask if I reported to anybody that I was selling "Koke" for "Coca-Cola"; I discussed it with men there in the store, and they argued there was more profit in selling "Koke" than there would be in selling "Coca-Cola" and you would get just as many customers as you would by selling "Coca-Cola." You ask if it was not well known that our store was carrying "Koke"; it was among the boys in the store. You ask if it was not known by everybody that our store was a "Koke" store; it was known by a good many "Coca-Cola" drinkers, they would recognize the difference, but as far as everybody knowing it, I couldn't say. I heard that after the store changed hands. I have had several men come in there and tell Messrs. Florence & Nossick that they would not patronize it—(Mr. DART.—"I didn't ask that, sir; you are volunteering it. We object to that as hearsay." Objection overruled. Exception.) I couldn't say that I reported to my bosses that I was selling "Koke" as "Coca-Cola." [651] Just as I told you a while ago, I talked it over and Mr. Pyle told me he considered it was making more than he could with "Coca-Cola" and that he didn't lose any customers. You say that that's entirely consistent with the idea that I was selling "Koke" and you ask me the specific question did I tell him that I was palming off "Koke" for "Coca-Cola"; he knew it. There wasn't any occasion for me telling him that I was palming it off because he was buying it and knew what went in.

(Deposition of D. P. English.)

No, sir; I did not ever serve it to any customers and tell them that they were served with "Koke" instead of "Coca-Cola," and I never did go to Mr. Pyle and tell him about anything like that, because he knew it. Yes, sir, he did see me serving it. When he is in the store he is usually right in the front where he can see anything and he was not asleep, he kept his eyes right wide open all the time. No, sir; he did not open the store, but he was there very early. No, sir; it is not true that he never saw me serve it behind the counter at any time. I would know that it is true, I did do it, and I know he has seen me behind there. I never made any record of the number of times he has seen me behind there, but it has been a good many times. I told you he did see me behind there, he was there, everywhere,. Of course, I don't stay there all the time, I go out sometimes—but he saw me there,—a very few days at a time, when he did not see me behind the counter at some time during the day, serving drinks. I have no doubt he saw me serving "Koke" for "Coca-Cola." You ask if I am sure that he did; yes, he saw me. I have not been talking to anybody about this case except a man came out there a while back and asked me when people called for "Coca-Cola" what name they called it and I told him the same as I did you all. No, sir; I did not tell him this story about substituting "Koke" for "Coca-Cola," I never told him at all. I never said anything to him about it until a few minutes ago. I talked to them this morning, though. I told them the story but not all I told you.

(Deposition of D. P. English.)

I did, however, tell them that I was serving "Koke" instead of "Coca-Cola." I left the Palace of my own accord. Mr. Pyle had gone when I left there, a new man had come in. **[652]** You ask if I stayed on with the new man and then left of my own accord; I changed when they bought the store. You ask if I am a druggist or a soda-water man; I am a druggist and was employed at this Mr. Pyle's store, that is, at the Palace Drug Store,—as a prescription clerk. Of course, I didn't buy the soda-fountain syrup which they served, myself. I don't remember that I ever ordered any and I don't think I did, but if I did, it would be just because they told me to order it, that they would be short of it and tell me to order it. I don't remember, though, that I ever ordered any. Yes, sir; the Palace had a fountain to serve their drinks through. They have the syrup jars at the fountain and keep their syrup in those—porcelain jars made to fit all fountains, just slip them in and out and put the pump in them. That is the way the majority of fountains are served. They have certain spigots for certain things. You couldn't serve but one drink out of one syrup can. What I mean is we have different spigots for different drinks, different containers for each syrup. The majority of those jars are behind the counter.

Deposition of E. Ewer, for Plaintiff.

E. EWER.

Direct Examination by Mr. ROGERS.

I am in the drug business, 523 South Ervay Street, Dallas, Texas. Yes, sir; I have a soda-fountain in

(Deposition of E. Ewer.)

my drug store. Yes, sir; I am around the fountain so that I can hear people when they ask for drinks, I wait on the trade forty per cent of the time. Yes, sir; I deal in "Coca-Cola." Yes, sir; it is a drink that is in demand, very much so. I presume I sell more "Coca-Cola" than any other one drink. Yes, sir; I know how people ask for it. The majority of them call for "coke." I understand when they call for "coke" that they want "Coca-Cola" and I always furnish "Coca-Cola." No, sir, I have never had it rejected as not what was asked for. You ask what my opinion is as to whether the word "coke" is a nickname or short name among the public; I presume it is just a nickname for "Coca-Cola"—not specially a nickname, either, but just to keep from saying the whole thing, just to shorten the word. [653]

Cross-examination by Mr. DART.

No, sir, I carry no other drink of that kind but "Coca-Cola" at my fountain. I have never handled any substitute. I have been in business myself about 2½ years. No, I wouldn't say that a large part of my trade calls for "Coca-Cola" by its own name. I would say that the majority of them call for "coke," more call for "coke" than for "Coca-Cola." Oh, yes, "coke" is not altogether the name that they use, there is a percentage of them that do call for "Coca-Cola."

Deposition of D. R. Keyser, for Plaintiff.

D. R. KEYSER.

Direct Examination by General CRANE.

I am manager of the Stovall drug-store, located on the corner of Corinth and Ervay Sts. I have been engaged in the drug business about nine years. I have never dispensed anything but "Coca-Cola" in the drug-stores I have been working at—I have dispensed it for every drug-store for which I have worked. Yes, sir, the concerns with which I have been engaged have been dispensing "Coca-Cola" at the soda-fountain. Yes, I have observed the different names under which customers call for it; they call for it under the name "coke," "dope" and "shot in the arm" and I have had a few of them come up there, personal friends of mine, and say "hit me with one," in a very few instances. With a great many of them the names would depend upon the degree of intimacy between me and them, intimate friends of mine. Practically all of my customers call for "Coca-Cola" as "coke," and when they do so I serve the "Coca-Cola." No, sir, they do not complain about it. No, sir, I have never sold, and have never been connected with a drug-store that did sell, this product known as "Koke," manufactured by the Koke Company of Texas. When my customers, therefore, called for "coke" I concluded that they wanted "Coca-Cola." Yes, sir, there were "Coca-Cola" advertisements about my store. I have never had any "Koke" advertisements there.

(Deposition of D. R. Keyser.)

Cross-examination by Mr. DART.

Yes, sir; I have been serving behind the counter myself. I am now manager, but I serve behind the counter occasionally when the soda-water man is out. That is usually an hour for dinner and an hour for supper. With that exception I don't serve behind the counter myself. **[654]** This condition has existed for nearly three months. I have been manager for three months. Anterior to that I did the soda work in connection with the work I could do. We sell a great deal of "Coca-Cola." At times when we get rushed, Mr. Stovall would come and help me. The business isn't large enough to carry a regular corps of soda-dispensers. I do the regular work and the soda business, too. I said that practically all of my customers call for it as "coke" and "dope." You ask what proportion call for "dope"; well, more of them call for "coke." I would say about three-fifths of them call for "coke," one-fifth for "dope" and the rest of them call for "Coca-Cola." Yes, about one-fifth of my trade call for "Coca-Cola." Yes, the name "Coca-Cola" is dying out in the trade, being abandoned. I haven't any idea why they should call it "dope" or "a shot in the arm" unless it is on account of the stimulating effect, that's the only reason I have why they should call it that.

Deposition of George C. Kershaw, for Plaintiff.

GEORGE C. KERSHAW.

Direct Examination by Mr. ROGERS.

I am manager of the Dade Drug Company, located at Elm and Lamar Sts., Dallas, Texas. I have been druggist for fifteen years and have had a soda-fountain and handled soda-water as a dispenser for ten years. Yes, sir, I have handled "Coca-Cola" as a dispenser. Yes, sir, it is a popular drink. Yes, sir, I am about the fountain myself a good deal of the time, so that I can hear people when they come in and ask for drinks that they want, I am right in front. You ask if people who desire drinks invariably call it "Coca-Cola," or if they make their wants known through other means; they seem to have different slang expressions for it,—sometimes call it "coke" or "dope." When a man calls for "coke" or "dope I have always thought that he wanted "Coca-Cola" and have always given him "Coca-Cola." I have never had "Coca-Cola" refused as not what was asked for. You ask how long I have known "coke" to be used as a short name for "Coca-Cola"; practically ever since I have been around the soda-fountain; namely, for about ten years. Yes, sir; I had a visit from a salesman, representing the Koke Company of Texas, in Dallas. The only argument he advanced was that I could buy it cheaper than I could buy "Coca-Cola" and that I could sell it and realize more profits and the public wouldn't know [655] any difference—that I could use it

as a substitute, in other words. This interview was probably two years ago, or a year and a half ago, anyway.

Cross-examination by Mr. DART.

No, sir; I cannot remember his name. You ask if I can remember the words he used in talking to me; just like all salesmen—came in and introduced himself, stated his business—"I am with the Coke Company of Pine Bluff," and so on—whatever it was. He said I could substitute and he also said other people were using it and getting by with it. Yes, I distinctly understood him to try to induce me to commit a fraud on the public—that's the way I understood it. Yes, sir; he said he was a salesman for the Coke Company of Pine Bluff; he said that was where it was manufactured—the Coke Company of Pine Bluff, Ark. He was here about two years ago and I have not seen him since. I told him I couldn't use the stuff at any price. You say that from what I say nobody calls for "Coca-Cola" any more, that they called for "coke" and "dope"; well, not altogether. Some people call for "Coca-Cola," some people express it as "coke" and still some others use a worse and more slangy expression—they say "shot in the arm"—"give me a shot in the arm"—all meaning "Coca-Cola," or so taken by me and the soda-fountains. No, the name "Coca-Cola" is not dying out—I guess about half of the people still say "Coca-Cola." As I say, about half of the people call for "Coca-Cola" and about half call for "coke" and "dope" and slang expressions meaning "Coco-Cola." No,

(Deposition of George C. Kershaw.)

sir, I don't try to correct that impression. Yes, sir, we have a lot of literature in our place begging the public not to use nicknames—to ask for "Coca-Cola" under its own name, but I don't try to get people to use those names in calling for it. Yes, about half of my customers call for it under the name "Coca-Cola."

Redirect Examination by Mr. ROGERS.

No, I have not noticed any lessening of the advertising of "Coca-Cola" in recent years; I believe, if anything, it looks like they are spending more. You ask what is the conspicuous feature of that advertising, what is the prominent thing that I see; I don't know what you mean. You ask if it is the word "Coca-Cola"; yes, its the word [656] "Coca-Cola." No, sir; I have never seen any "Coca-Cola" advertising that didn't have the word "Coca-Cola" on it.

Recross-examination by Mr. DART.

Notwithstanding all that, it seems that people are increasing in number that call it by nicknames, people take up short names and slang expressions. You say it looks like they are wasting their money advertising under the name "Coca-Cola"; it looks like they have been mighty fortunate so far—the Coca-Cola people have.

Deposition of Tony Giarraputo, for Plaintiff.

TONY GIARRAPUTO.

Direct Examination by General CRANE.

I am in the confectionery business and sell "Coca-Cola," and have been selling "Coca-Cola" for about thirteen or fourteen years, or may be fifteen years, I guess. Yes, sir, my customers call for it under more than one name; sometimes call it "coke"—"give me 'coke' "—they come say "give me 'dope,' " sometimes, of course, a new customer he say, "give me 'shot in the arm,' " and, of course, I know of no such names because it look too bad in business. You ask if many or few call for it under the name of "coke"; well, of course, in small town, you know, I couldn't say no "coke," of course, get many strangers, but my own folks, men come say, "give me a 'coke.' "—they use such language, the language I was speaking about,—it's custom, you might say, family custom by us, it's like family custom you might say, we do business with every hour, you might say, of course, they are joking, but the name is regular, they say "give me 'coke,' " and absolutely they mean "Coca-Cola"; if you was to try to give him something else they won't stand for it; therefore, I have been in business the time I answered a while ago and I never did have an imitation of "Coca-Cola," they been people try to sell to me, but I never did the buying. I can't tell you who it was who tried to sell it to me. You ask what it was they tried to sell me; well its "Koke," and then they used different names,

(Deposition of Tony Giarraputo.)

too. You ask what they said to me in trying to sell me the "koke"; well, it's natural to say if you want to make some money, it cost cheaper. I suppose he offered to sell it to me at about seventy-five cents gallon—"this syrup costs you cheaper" and say exactly like "Coca-Cola," but, understand, I wouldn't tell them I want to change **[657]** "Coca-Cola" for different drinks, but I won't change—a man comes to fountain, call for "coke" I want to give him "Coca-Cola," but if they come to me to try to sell imitation, I say I want to go to front and tell the people "this is a 'Coca-Cola' which is not a 'Coca-Cola' "—they no mean "Koke." You ask if he asked me to enter into a contract in writing or anything of the sort; yes, it was a nice-looking gentleman come into my place and says he want to sell me something "Koke"; I tell him "Is it 'Coca-Cola'?" he say, "No, it's something exactly like 'Coca-Cola,' " and they tell me it was one of the firm that used to be the one that makes "Coca-Cola" and I tell him—well, we were speaking about contract; I tell him "if you sign a contract which is pure 'Coca-Cola,' I will take a barrel on trial, but if it not good 'Coca-Cola,' if it not 'Coca-Cola,' I send it back," and, of course, he forces me to sign a contract and that they give me a share in the business, and, before I sign a contract with you in regard to this business, we got to go to the lawyer, because I no sign no paper until I know what's doing, and, of course, I never see this man no more, and he really no call on me since that time; I had a call about twice, I guess it was, about eight years ago, I bought

(Deposition of Tony Giarraputo.)
a five-gallon of "Koke" which they call "Celery-Koke," but, of course, I thought it was "Coca-Cola"—"Celery Koke." But when you find people they want "Coca-Cola" instead of "Koke" or "Celery-Coca-Cola," and I didn't display the "Koke" or sell the "Koke" at all, and the consequence is I can swear I throw in the scavenger wagon about a month or two ago, I have been keeping the stuff about eight years.

Cross-examination by Mr. DART.

You ask if I think now that I am exonerating myself from any charge of substituting other drinks for "Coca-Cola." What you say, please sir, I don't understand? You ask if I think these people are after me now to make me clear up my store so that I won't be guilty of selling anything but "Coca-Cola"—pardon me again, I don't exactly understand your meaning. You ask what I am testifying here, what kind of a case; I tried to do exactly what they asked me—I don't try to do anything. You ask what I am doing here now; I just answer the questions the gentleman asked me. You ask if I know what they are [**658**] asking me about; ask this fellow here, this bookkeeper here, he will tell you. Yes, sir, I mean the stenographer. Well, yes, I understand that I am here to clear myself from a charge of selling a substitute. Yes, sir, that is what I came here for, to make it plain that I haven't been selling substitutes for "Coca-Cola." You ask if I think they are charging me with selling substitutes for "Coca-Cola"; I don't understand what you are talking about. No,

(Deposition of Tony Giarraputo.)

sir; I won't sell substitutes for "Coca-Cola," for "Coca-Cola." No, sir; I did not think that they were trying to haul me up for selling a substitute for "Coca-Cola." You ask what I am scared of; I am not going to buy something for "Coca-Cola.' You ask if I am coming here to clear up my reputation; well, reputation is reputation—I came here to show you I don't want to buy a substitute to sell it for "Coca-Cola." You ask if I come here to show the Court that I haven't been swindling the Coca-Cola Co.; what you say, what do swindle mean? I wish you would talk plain English, I don't understand what you mean. You ask if I came to show the Court that I haven't committed any fraud on the Coca-Cola people; no, not the Coca-Cola people particularly. You ask what language I am talking; I suppose I talk the English language. Yes, sir; I came here for the purpose of clearing my own skirts of the charge of selling substitutes for "Coca-Cola." I understand your question and that is what I came here for; yes, sir. I came here to try to clear my own skirts, if I can, of that charge, and to make these people here see that I haven't been committing any fraud, that is what I came here for. I haven't been committing any fraud myself; yes, sir. I have been selling "Coca-Cola" all the way along. I keep my business in Dennison, Texas. Yes, sir; I came here to testify. Well, the Coca-Cola people brought me here. No, sir; they did not pay my way here, I paid my own way. No, sir; they are not going to pay it back to me. You ask what I am paying my own way to come

(Deposition of Tony Giarraputo.)
from Dennison here to testify for; of course, I am sorry, may be I talk wrong to you—is that your business whether I pay my way or not pay my way? No, sir; a detective has not talked to me about this thing. They called me up and wanted me to testify, say try to sell me "Koke" for "Coca-Cola" or if have been selling "Koke" for "Coca-Cola." You ask if you are correct in understanding me to say that they [659] wanted me to testify whether I had sold any "Koke" for "Coca-Cola"; no, sir; it is not right They asked when people called for "coke" what they meant, and I came all the way from Dennison at my own expense to testify that. Nobody asked me to come over except over the telephone. It was Mr. Harris who asked me to come over here. No, sir; I do not know the man that tried to sell me "Koke," I had never seen him before that time and have never seen him since. He told me he wanted to sell me "Koke;" he called it "Koke." They have a sample there in the bottle, but I tell them I don't want to see no samples so that this talk to me didn't result in anything. As I say, I bought five gallons of "Koke" about eight years ago. I didn't buy it from this man, I bought it from this other man about seven or eight years ago, but that five gallons I didn't serve to anybody. I kept it in the store-room. No, sir; I haven't still got it; I told you I throw it away about two months ago. You ask what made me keep it eight years, and then throw it away two months ago; like you ask me a while ago, this is free country, and I don't want to sell the "Koke," it no taste right to me

(Deposition of Tony Giarraputo.)

and I don't sell it. You ask if I tried it after keeping it eight years; I tried it before and keep going on and never use it. I tried it once eight years ago, and I kept it nearly eight years before I destroyed it. I was in a small place once about seven or eight years and then go rent this big place I got now, is about five years, and, well, they send me a little "Koke" from the little place to the big place. Yes, sir; I mean I carried it with me and they were rotting the barrel and I threw it away about two months ago. You ask if I mean to say that the kegs got rotten; one thing and another, I didn't keep in the store, of course; I paid money for it and didn't use it. No, sir; I did not destroy it, because a man came to me and talked to me about it. No, sir; it is not a fact that I did not destroy it after a man came to me and talked to me about it. No, sir; I was not afraid to keep it. No, sir; I was not afraid they would catch me with it. No, sir; that is not true. I bought what was mine and I don't want to use it. Yes, sir; my customers are friendly people, friendly to me, like in the same family; if you don't have no friendly [660] customers in a small town how could you make a living? You ask if I know all these people; I know lots, of course. When they come to me and ask for "shot in the arm" I know they mean "Coca-Cola." and when they ask for "dope" I know they mean "Coca-Cola," and when they ask me for "Coca-Cola" I suppose they mean "Coca-Cola." I believe about ten per cent of my customers call for "Coca-Cola" and the balance call for "coke." Ninety per cent

(Deposition of Tony Giarraputo.)

call for "shot in the arm," "dope" and "coke." You ask if the name "Coca-Cola" is passing out and if I hear it now as often as I used to; well, they abbrevia*tion* a little bit. They abbreviate the name of "Coca-Cola" a little, yes, sir, exactly, and I suppose the abbreviation is taking the place of the name. yes, sir; I believe that is the case in Dennison where I live.

Deposition of W. H. Ramsey, for Plaintiff.

W. H. RAMSEY.

Direct Examination by General CRANE.

I am in the drug business in Dennison, Texas, and have been engaged in that business for about five years. Yes, sir; we have sold and dispensed "Coca-Cola" to the public. I have been in the bottling business about four years, but I guess I have been selling "Coca-Cola" about five years. You ask under what different names my customers call for it at the fountain; they call for "coke," "Coca-Cola," and "dope." I suppose fully two-thirds of them, at least, call for "Coca-Cola" as "coke." In response to such requests I would serve them "Coca-Cola" because I think that's what they want. None of my customers complain, when they call for "coke" and I serve them "Coca-Cola," that I am not giving them what they ask for, but I have had them to compliment the "Coca-Cola," though, I have had them to compliment it as being better than they had gotten at certain other places.

Cross-examination by Mr. DART.

No, sir; I do not serve any other drinks of that

(Deposition of W. H. Ramsey.)

kind, but "Coca-Cola." Yes, sir; out at Dennison, the name "Coca-Cola" is passing and going away—people talk about "coke" and "dope." I hardly ever hear the name "Coca-Cola" any more. [661]

Deposition of F. W. Hayden, for Plaintiff.

F. W. HAYDEN.

Direct Examination by General CRANE.

I reside at Pilot Point, Texas, where I have lived for about forty years, and am in the retail grocery business, in which business I handle "Coca-Cola." The orders now presented to me marked Plaintiff's Exhibit #162, which were identified by the witness Lupton, this morning, were written by me. They were addressed to the Coca-Cola Bottling Works and I was making orders for so many cases of "coke" in each one. By the use of the word "coke" I intended the Coca-Cola Bottling Company to understand that I wanted five cases of bottled "Coca-Cola." I presume I have been dealing with the Coca-Cola Bottling Company at Dallas and calling it "Coke," when I wanted "Coca-Cola," about eight years; I called it nothing else except "Coca-Cola." I would not use the name "Coca-Cola" very frequently. I usually wrote those matters hurriedly and abbreviated them and made them as short as possible. You ask if I wrote the word "coke" then as an abbreviation of "Coca-Cola"; yes sir. The Bottling Company never inquired of me what I meant by "coke," and my orders were never refused to be filled because of the fact that I wrote "coke" instead of "Coca-Cola."

(Deposition of F. W. Hayden.)

Cross-examination by Mr. DART.

In speaking of it in a commercial sense, I call it "coke." Well, yes; I can say that I hardly ever think of it as "Coca-Cola." I don't think of it as "Coca-Cola," because I have had customers to come in the store the last few years and ask whether I handled "koke" or "Coca-Cola," and in reply I always tell them I handle "Coca-Cola." I can't say that except for those casual inquiries the name "Coca-Cola" is dropping out and "coke" is being substituted for it; I don't think the name "Coca-Cola" is dropping out to any very great extent. With me "coke" is taking its place only to a very small per cent. My customers don't call for "coke," they call for "Coca-Cola." In calling for drinks most of them have abandoned the use of the word "coke." I would judge that it is the word "coke" that is passing and not "Coca-Cola," and that "Coca-Cola" is coming back to it's own. That is true as far as I know, as far as my trade is concerned. You ask if the [662] Company is not making a determined effort to get the trade to speak of it as "Coca-Cola"—to call it by its full name; the company has never said anything to me about the full name "Coca-Cola" as I know of. Yes, in advertisements I have seen "Coca-Cola"—don't call for it by nickname." I have seen in the company's advertisements where they are insisting on people calling for "Coca-Cola" by its right name, and not by substitute. I don't know as I can give you what I see in the advertisements word for word, but I have seen where it said

(Deposition of F. W. Hayden.)

simply in substance, "If you want 'Coca-Cola' call for 'Coca-Cola.'" You ask if it is my opinion that out in my section the public has met that suggestion, and the use of the nicknames is passing and "Coca-Cola" is being called for by its own name; the public is calling for "Coca-Cola" by its own name, usually, more so than it has been, and the nicknames are passing away.

Deposition of J. B. Smith, for Plaintiff.

J. B. SMITH.

Direct Examination by General CRANE.

You have exhibited to me orders purporting to have been signed by my firm, being part of Plaintiff's Exhibit #162, and you ask if I am a member of the firm that made those orders; yes, sir. When those orders were made I was in the restaurant, confectionery and cold drink business at Tioga, Texas. We were there nearly four years and came to Pilot Point on the 27th of last August, where we have been doing business every day since. I recognize the handwriting in which those orders were written. They were written by Mr. Sundley, who is my partner. You ask if I knew what he was ordering when he was ordering "coke"; he was ordering "Coca-Cola,"—he might have wrote it "coke," but he was ordering "Coca-Cola." No, sir; we do not handle any "Koke" and have never handled it. You ask if we ever had any of these orders turned down by the Coca-Cola Company because that concern was not handling "Koke," or if it filled these orders with something else; we

(Deposition of J. B. Smith.)

just understood them, and he understood them, and we always got our orders filled. It came "Coca-Cola." When we would order four cases of "coke" they would supply it by four cases of "Coca-Cola." If he wrote it "coke" why we meant it for "Coca-Cola," just shorter meter, you know. [663] The letter is always addressed to the Coca-Cola Bottling Company.

Cross-examination by Mr. DART.

Pilot Point is about sixty miles from here, I guess, something like that. The ticket costs $2.95 a round trip, and that's what I was going by. You ask whether I came here in answer to a subpoena or whether I came here in answer to a request; I came here in answer to a request from the Coca-Cola Bottling Works, over the telephone. They said they wanted us to come to Dallas to-day. Mr. Hayden came over and told me that he got a 'phone that they wanted us to come and about that time they said they had a 'phone for me and I went to the office and they said it was the Coca-Cola Bottling Works. They never did tell us what they wanted us for, but they said they wanted us to be sure to come to-day. I didn't know anything about what they had on tap at all. The way I happened to find my way to this office is that I went to the bottling works and they brought us here. You ask if I am accustomed to obeying orders that way from the Bottling Works; it's the first time they have ever called us. They haven't paid my way yet, but I suppose they will do it. I didn't know that I was to be a witness in this

(Deposition of J. B. Smith.)

case. At Pilot Point we are carrying on a soft drink business; we sell milk shakes, "Coca-Cola,"—signs in the house say "Coca-Cola Bottling Works; call for it by the right name," but nearly every one says "give me a 'coke,' " and it's branded on the bottles at Pilot Point. You ask if any one calls for "Coca-Cola" any more; oh, once in a while a man comes in and says "give me a bottle of 'Coca-Cola' " and the sign up there like the company furnished says "call it by the right name." Once in a while a man calls for a bottle of "Coca-Cola"; there is supposed to be about half of them say "give me a bottle of 'coke.' " No, sir, they do not call it "dope," they just say "coke." Nobody out in the country has ever called it "dope" to me. At Tioga I have had them say "give me a shot in the arm"—they mean "Coca-Cola," though, of course. We have never sold anything called "Koke" or any other drink as a rival to "Coca-Cola"; we have never sold nothing but "Coca-Cola." When we used to be at Tioga, when we had that fount—we had a goose-neck and one of these little pump fountains—and they tried to sell us "Koke" for that and we never would buy it and the bottling works [664] at Whitesburg tried to sell us "Gay-Ola"—said it was the same as "Coca-Cola," but we never would buy that. So we have never handled anything but "Coca-Cola"; I call it "coke" myself, but we have never handled anything but "Coca-Cola"—the name is even branded that way on the bottle,—"Coca-Cola."

Deposition of Mrs. C. E. Flagg, for Plaintiff.

Mrs. C. E. FLAGG.

Direct Examination by Mr. ROGERS.

I have a confectionery store and floral shop at the corner of Jefferson and Marsello Sts., Oak Cliff, which is a suburb of Dallas, Texas. Yes, sir; I had an interview at one time with a salesman selling a product which he called "Koke." He wanted to sell me this "Koke" for ninety cents a gallon. He said it would be a great saving as "Coca-Cola" would cost me ($1.50) a dollar and fifty cents; I told him I didn't want it. He said you couldn't tell the difference between "Coca-Cola" and "Koke" and also that the people couldn't tell the difference between them. I told him when people asked for "coke" that they wanted "Coca-Cola" and he said that they didn't, that they wanted "Koke"; he said, "Of course, when people come in and ask for 'coke' they want 'Koke' " and that we were supposed to serve "Koke"; and I said, "No, when a person asked for 'coke' it's just a short way of asking for "Coca-Cola.' " No, I did not buy any "Koke" from him. You ask if that is substantially what occurred at that interview; well, he got pretty angry and then he came back the second time and next time he came back I just simply told him I didn't want it. Those interviews happened about a year ago.

(There was no cross-examination of this witness.)

Deposition of Peter Camarinos, for Plaintiff.

PETER CAMARINOS.

Direct Examination by Mr. ROGERS.

I am in the confectionery business at McKinney, Texas. I sell soft drinks including "Coca-Cola" and have been doing so for fifteen months. You ask if I know how people ask for it when they want "Coca-Cola"; they say lots of times "Coca-Cola," "coke," "dope," "shot in the arm," "hop," sometimes. I understand by requests for any of those things that they want "Coca-Cola" and "Coca-Cola" is what I always furnish. I had a call from a man representing the Koke Company here in Dallas—I couldn't remember exactly—two or three [665] months ago. He had some "Koke" which he offered to sell me. Tell me sell it cheaper than "Coca-Cola" and make more money than I could by selling "Coca-Cola." You ask if he said I could sell it for "Coca-Cola"; yes, sir. You ask if he said it was like "Coca-Cola"—couldn't tell the difference, anything of that sort; no, he say people can't tell difference.

Cross-examination by Mr. DART.

No, I don't know the name of that man, nor did I ever see him before he called on me. I never saw him but once or twice. Yes, sir, he said to me that it was as good a drink as "Coca-Cola" and he says I can sell it for "Coca-Cola." Yes, sir; I am sure he told me I could sell it for "Coca-Cola." You ask me if that's why I refused to buy it; well, of course, I wouldn't buy nothing that ain't true, and, really, I

(Deposition of Peter Camarinos.)

been selling "Coca-Cola" last six or seven years, and am satisfied. No, sir; I don't know anything about "Koke," the drink. I didn't even look at it. He says "Koke" and I tell him to let me alone. I did not buy it, and never have sold it. I can't remember the name of the man who talked to me, I never asked him, and I can't remember when the conversation occurred except that I believe it was about three months ago, the last time. I didn't take his name. Yes, sir; I do a large "Coca-Cola" business. You ask how much of it is called for under the name "Coca-Cola"; well, they call it "Coca-Cola" and they call it "coke" and "dope" and "hop" and "shot in the arm." Pretty near every one calls for it under those names, so that the name "Coca-Cola" is not often used. You ask if it is passing out of use with us; well, good many people call "Coca-Cola," but I have got people call it "coke," "dope," or something like that. But the great bulk of my trade calls for it under those various names.

Deposition of B. N. Harris, for Plaintiff.

B. N. HARRIS.

Direct Examination by Mr. ROGERS.

I am salesman for the Coca-Cola Co. I live in Oklahoma City and Dallas—I have two headquarters. Yes, sir; I can identify the card now shown me starting "Dallas, Texas" and purporting to be signed "The Koke Company." I sent this card from McAlester to the Coca-Cola Company in Atlanta, Georgia. [666] I got it from the McAlester Candy

(Deposition of B. N. Harris.)

Kitchen, which concern gave it to me. (Plaintiff here tendered and offered in evidence the card referred to as Plaintiff's Exhibit #154.)

[There was no cross-examination of this witness].

(It is stipulated and agreed between Counsel that the witness Camarinos is a Greek.)

Deposition of T. J. Britton, for Plaintiff.

T. J. BRITTON.

Direct Examination by Mr. ROGERS.

I am in the retail drug business at the corner of Elm and Ackard Streets, Dallas, Texas, in which business I have been engaged 17 years, this October, all the time in Dallas. During all of this time I have operated a soda-fountain in my store. Yes, we dispense "Coca-Cola." Yes, sir, "Coca-Cola" is a very popular drink and is extensively advertised. You ask how people who come to my fountain indicate to me that they desire the product of the "Coca-Cola" Company; well, I should judge that about fifty per cent of them call it "Coca-Cola," the balance of them call it "coke" and "dope"—"coke" and "dope" are the principal names. When a man asks at my fountain for "coke" or "dope" I understand that he means "Coca-Cola" and I always supply "Coca-Cola" in response to such a request. I have never had it rejected as not what was asked for. I don't know how long "koke" and "dope" has been used as designations of "Coca-Cola"—oh, in the last six or seven years, I judge, maybe longer, I don't know. Yes, sir, I have known the name "coke" as

(Deposition of T. J. Britton.)

a nickname for "Coca-Cola" about the same length of time. I recollect having a representative call upon me trying to sell me the product "K-O-K-E" made by the Koke Company of Texas. I think it was about three years ago that he came in the store and tried to sell me some "Koke," and, of course, the argument that they all put us is that it can't be told from "Coca-Cola," and I think it was cheaper—I think he offered it at about a dollar a gallon, and I told him, no, I didn't care for it, I didn't dispense anything but the genuine "Coca-Cola" and had never handled any substitute for it; and, in the course of the conversation, he intimated to me that when I sold a man "Coca-Cola" when he called for "Koke" that I was substituting, and I immediately told him that he would have to withdraw from my office, that I didn't have time to talk to a man that would advance that kind of an argument. [667] Yes, sir, the public, when asking for "Coca-Cola" at my fountain, prior to that time, had been asking for it under the name "coke."

Cross-examination by Mr. DART.

No sir; I don't know the name of the gentleman who called on me in regard to it. Well, I may have seen him before, he may have called on me a time or two, I don't know. Yes, sir; when he began to argue as to the right of his proposition, I shut off the argument and ordered him out—when he got to the point that I was substituting, I did. I cut him off when he began to argue as to the right of his position. Previous to that time we got in a little argument,

(Deposition of T. J. Britton.)

and I just simply told him we had not been selling "Coca-Cola" under the name of "Koke," when people came in and called for "coke," we had been selling "Coca-Cola" for some little time, and his company were trying to steal the thunder of the Coca-Cola Co. That was my argument to him, and he was just trying to combat that argument. You say that when he began to advance the argument in support of his position that he had the right, then I stated that I had no time to talk to him further; when he told me I was substituting, when a man came and called for "Koke" and I gave him "Coca-Cola," that I was substituting, I told him I didn't have any further time to talk to him. I have sold nothing but "Coca-Cola" all my life. Well, I don't know whether my establishment is known in this town as one of the prominent "Coca-Cola" establishments or not; I leave that to you to answer. I do, as a matter of fact, do a very large "Coca-Cola" business, and have done it for years, and it's a very valuable business to me and I wouldn't do anything to jeopardize that business willingly. I think the Coca-Cola Company, through their system of advertising, has made it possible for fountains to keep open, where they otherwise would have closed down. No, sir; I would not willingly take on a rival to "Coca-Cola" that would jeopardize my interests. Yes, sir; my interest is to keep the business and keep the "Coca-Cola" business I have, and, besides, I have a friendly feeling towards "Coca-Cola." No, sir; I personally do not still serve at my foun-

(Deposition of T. J. Britton.)

tain. Frequently I go to tables and take orders for the boys, when they get busy. I have gathered a general opinion as to the percentage of people who call "Coca-Cola" by those different names by the supervision [668] I exercise over my store, but not from personal every-day contact. I judge that about fifty per cent call for it as "Coca-Cola" and the remainder by various names. I have heard the names "coke" and "dope"—mostly "coke," they say, "give me a 'coke,'" There are some other names I have heard that I did not mention, but I think "coke" and "dope" are the principal ones—mostly "coke."

Redirect Examination by Mr. ROGERS.

Yes, sir; it is a common thing for a well known and widely advertised article to be nicknamed. They come in and call for Fatima cigarettes for instance, "give me a bag of fatty ma's." You ask if I hear them call for a package of "Bull"; yes, sir—"give me a sack of 'Bull,'" they mean by that "Bull Durham" and Piedmont cigarettes, they call for "Pieds" and in calling for Hamilton-Fish cigars they say, "give me a whale"—oh, I don't know, a lot of those things like that.

Recross-examination by Mr. DART.

Yes, sir; I handle all these things I am speaking about in considerable quantity. No, I guess there is not very much difference between "Fatima" and "Fatty-Ma" in the sound to the ear, and it isn't a very far cry to call "Bull Durham," "Bull." You

(Deposition of T. J. Britton.)

say you are not familiar with the Hamilton Fish Company and ask if there is any reason why one should call that "a whale"; well, it's a big fish, you know. I don't know whether that is a general call or an occasional call, a good many customers come in and call for it that way. Yes, sir; I am a practical druggist.

Deposition of B. W. Fuller, for Plaintiff.

B. W. FULLER.

Direct Examination by General CRANE.

I reside at 2521 Meyers Street, Dallas, Texas. I am a soda dispenser and have been for about eight years. I am with the Vienna Ice Cream factory, Kirby Drug Store, and the Palace Store. I worked for the Kirby Drug Store at Main and Ervay Streets for three years. My customers buying "Coca-Cola" call for it as "coke," "Coca-Cola," "dope," and "shot." About nine out of each ten call for it under the name of "coke," and in response to such requests I serve "Coca-Cola." [669] "X. 12. What did you understand your customers to be calling for?" "A. 'Coca-Cola,' the majority of them wanted 'Coca-Cola.'" You ask if they complained when I served them "Coca-Cola"; yes, sir, they complained when I gave them "Koke." They complained—I say they meant "Coca-Cola." The Kirby Drug Company at one time dispensed "Koke" over its counters. They carried it exclusively as long as they lasted,—the last month or so while I was there. You ask if they

(Deposition of B. W. Fuller.)

sold it as "Koke" or as "Coca-Cola"; they sold it as both. If a man came in and called for "Coca-Cola" they served him "Koke"—they didn't have anything else to serve him. Sometimes they told him what they were selling, told him it was "Koke," and sometimes they didn't—supposed to tell it along towards the last, they were supposed to tell him it was "Koke." You say you are not trying to find out what they were supposed to do, but whether "Koke" was sold by the Kirby Drug Company as "Koke" or as "Coca-Cola"; as both—first it was sold as "Coca-Cola," as long as it lasted, and then they sold it as "Koke." It must have been about a month, I guess, that they sold it as "Coca-Cola." No, sir; they did not have any "Coca-Cola" in stock when they were selling them "Koke" for "Coca-Cola." One reason why I quit them was on that account, I had so much trouble about the "Coca-Cola" customers. They kicked on it. The customers that came in there, one thing would bring on another, about what the drink was, that it wasn't right, that they wanted "Coca-Cola" and couldn't get "Coca-Cola" and got "Koke"—they would be dissatisfied. You ask why, then, did I quit, and why I could not have told them when they were asking for "Coco-Cola" that I was serving them "Koke"; I did tell part of them and they all quit. The customers were dissatisfied with my telling them that it was "Koke." That was partly the cause of my quitting the store. No, the proprietors of the store didn't make no objection. Yes, sir; they wanted me

(Deposition of B. W. Fuller.)

to sell the "Koke" as "Coca-Cola," just before I quit there—they quit telling people it was "Coca-Cola" and told them it was "Koke"; a man came in there and asked me for "Coca-Cola," I would tell him it was "Koke"; well, no soda dispenser wants to tell a man he hasn't got "Coca-Cola" and has only got "Koke," and so I quit them. **[670]**

Cross-examination by Mr. DART.

During the time I was working in this "Koke" line, J. R. Blakeney was my boss. When I had calls for "Coca-Cola" and told the customers we were selling "Koke" they didn't want "Koke." I did tell them we were selling "Koke," some of them I did, yes. You ask if my boss did not tell me to tell customers that we were selling "Koke"; that's along toward the last part, he told me to tell them I was selling them "Koke." No, sir; he never jumped on me about saying it wasn't "Koke." No, sir; he never quarreled with me about not telling them it was "Koke" instead of "Coca-Cola." Along towards the last I served it as "Koke" to those people, but at first I served it as "Coca-Cola." You ask if I then had some complaint made to me by my boss; he told me to sell "Koke" for "Coca-Cola" and that's all the complaint I had. Yes, sir; I charge my boss Mr. Blakeney with telling me to sell "Koke" for "Coca-Cola." When they asked for "Coca-Cola" I sold them "Koke" because I didn't have anything else to sell, and then, when they complained of it, I told them it was "Koke" I was selling. Towards the last I sold it as "Koke" to them

(Deposition of B. W. Fuller.)

and didn't pretend it was "Coca-Cola." When I left the company Mr. Blakeney was there, and my last service there I was serving "Koke" pure and simply to my customers and they knew it, and that wasn't as popular as "Coca-Cola."

Deposition of Sam Friend, for Plaintiff.

SAM FRIEND.

Direct Examination by Mr. ROGERS.

I am 25 years old and am employed by the Coca-Cola Co. Before I was employed by the Coca-Cola Company I was employed by the Pinkerton National Detective Agency. Recently I have made an investigation for the Coca-Cola Company with respect to the trade meanings of the names "coke" and "dope." In making this investigation I traveled through the states of Georgia and Texas, visiting seventy-two towns; namely, Griffin, Barnesville, Macon, Conyers, Social Circle, Covington, Monroe, Winder, Lawrenceville, Buford, Roswell, Gainesville, Toccoa, Royston, Athens, Elberton, Madison, Greensboro, Washington, Thomson, Warrenton, Milledgeville, Jonesboro, Locust Grove, Stockridge, McDonough, Jackson, Flovilla, Monticello, Eatonton, Montezuma, Marshallville, [671] Americus, Dawson, Ellaville, Cuthbert, Buena Vista, Albany, Ashburn, Tipton, Moultrie, Douglas, Fitzgerald, Ocilla, Sylvester, Cordele, Ft. Gaines, Blakely, Bainbridge, Adel, Donaldsonville, Thomasville, Pelham, Camilla, Meigs, Quitman, Boston, Valdosta, Waycross, Georgia, Dallas, Houston, San Antonio, New

(Deposition of Sam Friend.)

Braunfels, San Marcos, Austin, Taylor, Temple, Bolton, Ennis, Corsicana, Texas. Investigation which I made was as follows: I would go up to the soda-fountain and ask for a "Coca-Cola" and would note the container from which the syrup to make the drink served me was drawn; I would then remain around the fountain for different periods of time, ranging from twenty to fifty minutes and observe the calls for "dope," "coke" and "Coca-Cola," observing from what container in the fountain the syrup to make the drinks served in response to those calls was drawn. Later in the day I would again call at the same fountain for a "dope," observe the spigot from which the syrup was drawn to make that drink, and, also, the containers from which the syrup was drawn to make the drinks of other customers asking for "dope," "coke" and "Coco-Cola." Still later in the day, or the next day, I would again call at the same fountain and ask for a "coke," making the same observations.

In the majority of cases—in all cases, I might say—at each soda-fountain that I visited the syrup to make the drinks served to me in response to my requests for "Coca-Cola," "coke" and "dope," and the syrup to make the drinks served to the customers in response to their requests for "dope" and "coke" and "Coca-Cola," was all drawn from one and the same container in the fountain. In the following tabulation the first column indicates the name of the town, the second the name of the store, the third the length of time during which I stayed about the foun-

(Deposition of Sam Friend.)

tain and observed the calls of customers, the fourth the number of calls for "Coca-Cola," the fifth the number of calls for "dope," the sixth the number of calls for "coke," during the period of my observation. (*) indicates that the container was marked "Coca-Cola." [672]

		Hr.	Min.	CC.	D.	K.
Griffin, Ga.	*Brooks County Drug Store	1	25	7	9	
	*Carlisle & Ward		55	5	7	
	Derrick Drug Co.		55	2	6	
	R. N. Mitchell Drug Store		35	6	5	
Barnesville	J. H. Blackburn	1	10	3	6	
	Barnesville Drug Co.		55	4	5	
	Anderson Drug Co.		50	3	6	
	Barnesville Drug Co.		55	4	3	
	Anderson Drug Co.		35	2	4	
	J. H. Blackburn Drug Co.		40	3	5	
Macon	Saunders Drug Co.	1	20	5	11	
	Chapman's Drug Store	1	20	9	13	
	Taylor & Bayne Drug Co.	1	15	9	11	
	J. H. Lamar Drug Co.	1	15	5	6	
	Murray & Sparks Drug Co.	1	30	14	5	
	King & Oliphant Drug Co.	1	05	8	8	
	L. C. Small Drug Co.	1	20	5	11	
	Saunders Drug Co.		20	2	2	
	Chapman's Drug Store		15	1	2	
	Taylor & Bayne Drug Co.		20	1	3	
Conyers	W. H. Lee Drug Co.	1	20	3	6	
	Street's Drug Store		55	3	4	
Social Circle	Knox Pharmacy	1	25	5	3	
Covington	Smith's Drug Store	1	20	3	3	
	City Pharmacy		50	4	12	
	C. C. Brooks	1	25	4	9	
Monroe	Carmichael Drug Co.	1	30	5	9	
	W. S. Stovall	1	25	4	7	
	Chaffin Drug Co.	1	05	6	7	
Winder	G. W. DeLapieriere & Sons	1	15	4	6	
	J. T. Wages' Drug Store		45	3	7	
	L. E. Herren's Drug Store	1	15	2	6	

		Hr.	Min.	CC.	D.	K.
Lawrenceville	*Ezzard-Montgomery Drug Co.	1		2	5	
	Kelley Drug Co.	1		5	6	
Buford	Buford Pharmacy	1	10	3	3	
	Prater & Murphy	1	10	3	4	
	J. T. Rowe Drug Co.		50	2	3	
Roswell	Roswell Drug Co.		55	2	4	
	J. G. Power Drug Store	1	10	2	3	
Gainesville	Piedmont Drug Co.	1		3	7	
	Roberton Drug Co.	1	20	3	4	
	Stringer's Ice Cream Parlor	1	15	4	7	
Toccoa	Barron Bros. Ice Cream Parlor	1		3	4	
	*Peoples Drug Store	1	15	3	5	
Royston	Ridgeway Drug Co.	1	30	5	5	
	Royston Drug Co.	1	20	4	4	
Athens	*Poss' Place	1	25	5	10	
	*Bland Bros.	1		2	4	
	*Costa's Place	1	05	7	15	
	*M. & W. Cigar Co.	1	15	5	8	
Elberton	*Herndon's Drug Store	1	10	4	7	
	*Cleveland Drug Co.	1	05	4	6	
	Rapley & Manley	1	15	4	5	
Madison	*Atkinson Drug Co.	1	45	5	2	
	*Tunnison's Phar.	1	35	4	5	
Greensboro	*Rice Drug Co.	1	30	6	4	
	Armor Drug Co.	1	05	4	5	
Washington	*Moore Bros.	1	30	2	4	
	J. B. Green	2	10	3	6	
Thomson	A. J. Matthews	1	45	3	4	
	*Gibson Drug Co.	1	25	4	5	
Warrenton	*Evans Drug Co.	1	30	2	4	
	*Baker's Soft Drink Stand	1	35	3	7	
Milledgeville	*Culver & Kidd	1	15	3	6	
	Barrett's Drug Store	1	10	2	6	
	Ennis Drug Co.	1	30	5	5	
Jonesboro	Cousins Drug Co.		50	2	2	
Locust Grove	Locust Grove Drug Co.		50	2	2	
Stockbridge	Ward Drug Co.	1	45	1		
McDonough	*McDonough Drug Co.	1	35	3	2	

		Hr.	Min.	CC.	D.	K.
McDonough	*Horton Drug Co.	1	25	2	3	
Jackson	*The Owl Drug Co.	1	20	5	4	
	*Slaton Drug Co.	1	15	6	5	
	Woods & Carmichael Drug Co.	1	15	4	9	
Flovilla	*A. F. White Drug Co.	1	25	4	8	
Monticello	Furse Drug Co.	1	40	6	6	
	*Jordan Drug Co.	1	40	5	9	
Eatonton	*Belvin's Drug Store	1		3	3	
	*Central Pharmacy	1	20	2	4	
	*D. L. Thomas Drug Store	1	05	4	4	
Montezuma	*A. C. Richardson & Son	1	25	3	4	
	*Read's Drug Store	1	25	3	6	
	Walker Drug Co.	1	15	5	4	
Marshallville	*Booton's Drug Store	1	30	1	2	
Americus	Howell & Prather	1	30	4	10	
	Hook's Drug Store	1	45	5	11	
Dawson	*Tanner Drug Co.	1	15	4	5	
	*City Pharmacy	1	25	4	7	
	*Dawson Drug Co.	1	20	1	5	
Ellaville	*City Drug Store	1	30	1	1	
Cuthbert	Moore Drug Co.	1	20	3	4	
	*Zuber's Soft Drink Stand	1	15	6	11	
Buena Vista	*City Drug Store	1		2	6	
Albany	*Albany Drug Co.	1	20	5	9	
	*Royal Ice Cream Parlor	1	15	8	9	
	Cash Drug Store	1	15	7	12	
	Bell Drug Co.	1	05	7	12	
Ashburn	*Ashburn Drug Co.	1	30	2	6	
	*Parker Drug Co.	1	35	4	7	
Tipton	Mills Drug Co.	1	35	4	7	
	*Peoples Ice Cream Parlor	1	15	5	9	
	Brooks Drug Store	1	20	3	7	
Moultrie	*Williams Drug Co.	1	25	2	5	
	Watson Drug Co.	1	15	2	7	
	Hawkins Drug Store	1	05	5	9	
Douglas	Farmer's Drug Store	1	25	3	7	
Douglas	*Sapps Drug Store	1	15	6	6	
	*Union Pharmacy	1	30	3	6	
Fitzgerald	*Goodman Drug Co.	1	35	1	4	
	*Dixie Pharmacy	1	15	1	6	
	National Drug Co.	1	30	3	6	

		Hr.	Min.	CC.	D.	K.
	Adams Candy Kitchen	1	05	1	6	
Ocilla	City Drug Store		50		2	
	Ocilla Pharmacy	1	20	2	6	
Sylvester	Cash Drug Store	1	10	1	3	
	*Bell & Lee Drug Co.		55	2	1	
Cordele	*Cash Drug Store	1	35	3	6	
Cordele	*Williams Drug Co.	1	15	5	9	
	*Steab's Drug Store	1	15	3	9	
Ft. Gaines	*People's Drug Store	1	30	3	11	
	John Brown's Place	1	20	8	12	
Blakely	Morris Drug Co.		50	1	3	
	*Pryer's Pharmacy		50	1	3	
Bainbridge	Oak City Drug Co.	1	35	1	5	
	Bainbridge Pharmacy	1	20	1	4	
	Mills Drug Store	1	15	7	12	
Adel	Adel Drug Co.	1	30	3	6	
Donaldsonville	Palace Pharmacy	1	15	1	4	
Thomasville	*Peacock & Nash Drug Co.	1	10	3	8	
	City Drug Store	1	05	4	9	
	Ingram Drug Co.	1	25	6	12	
Pelham	Hill & King Pharmacy	1	30	2	6	
	Consolidated Drug Co.		50	2	6	
Camilla, Georgia	Camilla Drug Co.	1		3	2	
	Stripling's Pharmacy		5	4	3	
Meigs	The Rexall Store		45		1	
	Iselar's Pharmacy	1			1	
Quitman	Horn Drug Co.	1	15	2	5	
	*Savoy Soft Drink Stand	1	10	3	8	
	Brooks County Drug Co.	1	20	3	5	
[674]						
Boston	City Drug Co.	1	15	1	4	
Valdosta	Vinson Drug Co.	1	10	4	8	
	*Ingram Drug Co.	1	20	5	10	
	Dunnaway's Pharmacy	1	35	1	5	
	Barnes Drug Co.	1	15	6	9	
	Mackey Soft Drink Stand	1	10	4	9	
	Bergstrom & Newberg	1		6	10	
Waycross	*Mills Drug Co.	1	5	5		
	*Spear & Register Drug Co.	1	10	3	6	
	Cherokee Pharmacy	1	15	3	4	
Dallas, Tex.	Cecil V. Rogers Drug Store	1	20	8		13

		Hr.	Min.	CC.	D.	K.
	*Britton's Drug Store	1	15	11		11
	*Dimitri & Mimich	1	20	15		24
	*St. George Drug Store	1	15	7		15
	*Southland Pharmacy	1	25	21		39
	Thomas' Candy Kitchen		40	7		11
	Thomas' Candy Kitchen		50	8		14
	Moss' Pharmacy		30	2		5
	Princess Confectionery Store		30	3		
Dallas, Tex.	Marvin's Drug Store		35	5		7
	Tate Drug Store		30	4		2
	Moss' Pharmacy No. 2		30	1		2
	*Ewer Drug Co.		35	1		3
	Hippodrome Confectionery		25	3		4
	*J. A. Skillern & Sons		25	2		5
	Central Drug Store		30	1		1
	*Moore's Commerce Pharmacy		30	2		1
	*Capitol Drug Store		45	2		2
	Burlington Drug Store		30	1		3
	*Treadwell Drug Co.		45	3		2
	Dallas Pharmacy		30	3		1
	*J. A. Skillern & Sons #3		30	3		2
	*Oak Cliff Pharmacy		30	2		1
	Furlow Linder		25	1		3
	Red Cross Pharmacy		25	3		1
	Arcade Confectionery		30	1		3
	Texas Cigar Co.		30	4		4
	*Washington Ave. Pharmacy		30	1		2
	Cormick Drug Co.		30	2		3
	J. A. Skillern #2		20	2		4
	*Atha's Place		25			2
	Cossu's Place		25	1		3
	Saeger Bros.		25	4		8
	Craig's Place		20	1		
	Imperial Pharmacy		20	1		3
	*Rhinelander's Pharmacy		30	2		4
	*Allen's Pharmacy		30	2		1
	*Stovall's Pharmacy		20	1		3
	*Wimans Pharmacy		25	2		1
	Grand Ave. Pharmacy		25	2		1
	*Cantor's Pharmacy		30	2		2
	Second Avenue Pharmacy		30			1

		Hr.	Min.	CC.	D.	K.
	*Smoot & Crow Drug Store		35	1		1
	Fair & Park Drug Store		25	1		2
	*Guy's Pharmacy No. 2		35	1		2
	*McGwier's Pharmacy		25	1		1
	*Robertson Drug Co.		25	3		2
	Wilson Drug Store		15	1		1
	Bindley's Pharmacy		15			1
	Brandley's Pharmacy		15	2		3
	*Clayton's Pharmacy		20	1		1
	*Center's Drug Store No. 2		20			1
	*Kirby's Drug Store		20	1		2
	*Green's Drug Store No. 1		20	2		2
	*Green's Drug Store No. 2		20	1		1
	English Pharmacy		15	2		3
	Eagle Pharmacy		20	1		2
	McFarland's Drug Store		15	2		2
	*Tremont Pharmacy		15	1		2
	Justice Pharmacy		15	2		2
[675]						
Dallas, Tex.	Weichsel Pharmacy		20	2		2
	High School Drug Store		15	2		2
	Medlock's Pharmacy		15	1		1
	*Springfield Drug Store		20	2		2
	E. J. Rust & Bros.		15			1
	*Clark's Pharmacy		15	1		1
	Linder's Pharmacy		20			1
	Guy's Pharmacy		15	2		2
Houston, Tex.	*Anderson Drug Co.		25		1	5
	*Woods-Ehrhart Drug Co.		25	2		3
	McFarland's Pharm.		30	2		2
	Bennett's Phar.		30	1		2
	*South End Pharmacy		35	1		2
	Hoencke Pharmacy		40	2		2
	Hoencke Pharmacy No. 2		30	1		1
	*Anita Pharmacy		30	1		2
	Ridley's Pharmacy		30	2		1
	*City Drug Store		20	1		2
	*Manhattan Confectionery		40	2		2
	*Public Drug Store		30	2		4
	The Rouse Drug Co.		30	2		6
	*Rouse Drug Co. No. 2		35	3		4

		Hr.	Min.	CC.	D.	K.
	Rice Annex Drug Store	25	5			3
	Pappas Bros. Confectionery	30	6			10
	Burgheim's Phar.	25	2			4
	*Hendrix Phar.	20	1			2
	Grasse Drug Co.	35	1			2
	Spears Drug Store	25	1			1
	*Magnolia Phar.	25	1			2
	*Cockrell's Phar.	25	2			3
	*Post Office Pharmacy	35	2			3
	*Post Office Pharmacy	35	4			2
	*Wicks & Co.	30	2			8
	Olympia Candy Kitchen	30	5			12
	Clay & Gilpin	25	1			2
	*Griffin's Pharmacy	20	1			1
	*Keisling Pharmacy	30	3		1	5
	*Cockrell's Pharmacy	25	1			2
San Antonio	Mulburn Bros. Pharmacy	35	2			5
	*Busy Bee Candy Kitchen	25	2		1	5
	Summers Drug Store No. 1	25	3			4
	Summers Drug Store No. 2	25	1		2	3
	*Whisenant Drug Co.	20	6			4
	Burns Drug Store	30	2			4
	*Pfeiffer's Cut-Rate Drug Store	25	2		1	2
	*George Keen's Drug Store	30	5			4
	*Twentieth Century Drug Store	30	0		1	1
	*Kalteyer & Sons	35	1			1
	Taliaferro's Phar.	20	2			3
	*Marshall Johnson's Pharmacy	30	1			1
	Chapin's Phar.	15	1			1
	Dreiss Drug Store	30	2		1	2
	*Quillian Confectionery	25	4		1	3
	*Palace of Sweets	25	1			1
	Wagner Pharmacy	25	5			3
	*Kalteyer's Phar.	25	2			2
	*Fisher's Drug Store	30	1			3
	Crutcher-Threadgill Phar.	30	1			1
New Braunfels	*Richer's Phar.	30	1			1
	Sippels Confectionery	45	1			3
	Walter Sippels Confectionery	30	1			3

		Hr.	Min.	CC.	D.	K.
San Marcos	Story's Confectionery		50	2		2
	Vinson's Pharm.		25	1		2
	McIntyre's Confectionery		30	2		3
[676]						
Austin	*Van Duris Confectionery		30	2		4
	*Gates & Cornwell Drug Store		35	1		3
	Crescent Confectionery		30	2		5
	Griffith Drug Co.		30	3		4
	Van Smith's Phar.		35	4		6
	*Johnson's Phar.		25	1		2
	Jeff. S. Wimbish Phar.		25	1		1
Taylor	Lyle's Phar.		45	1		2
	*Metropole Confectionery		35	2		2
	Friend's Place		30	3		3
	*Dalliet's Phar.		30	1		2
Temple	Olympia Confectionery		35	3		6
	Mississippi Dept. Store		45	5		8
	*Power's Drug Store		25	1		2
	*Square Drug Store		25	2		2
	*Zacharias Confectionery		30	5		3
	Willis & McLean		25	2		2
	C. L. Reynolds Drug Store		40	4		7
Belton	Melot Bros.		30	2		4
	Olympia Candy Kitchen		30	2		6
	Head Drug Co.		40	2		2
Ennis	*Castellaw Drug Co.		25	2		4
	*John L. Stevenson Drug Store		20	2		1
	*Ennis Drug Co.		35	2		2
	*Glover & Guthrie Drug Co.		25	1		3
	Hesser's Phar.		25	2		4
	*Cunningham's Confectionery		30	1	1	2
Corsicana	Commercial Drug Store		25	2		2
	Owen Matthews Drug Store		35	1		3
	Harper & Inabnit		30	2		3
	Lawson Colson's Drug Store		30	1		3
	Beaton & Bagby		30	1		2
	*John Merchison		25	2		2
	Fifth Avenue Confectionery		25	1		3

(Deposition of Sam Friend.)

At a number of stores visited I made consumers' tests—that is to say, I instructed the dispenser on duty to ask each and every person calling at the fountain for either "coke" or "dope" what he meant and I stationed myself in the vicinity of the fountain where I could hear the requests of the customers, the questions of the dispenser, and the replies of the customers thereto. At the fountain at the following places during the time specified in my presence every person using the word "coke" or "dope" in ordering was asked by the dispenser what he meant and in each instance the answer was "Coca-Cola." Following is a tabulation of the consumers' tests so made. The first column indicates the name of the town, the second the name of the store, the third the name of the dispenser who put on the test, the fourth the length of time during which the test was conducted, the fifth the number of persons calling for "dope" and the sixth the number of persons calling for "coke." **[677]**

		Dispenser.	Hr.	Min.	D.	K.
Macon, Ga.	Saunders Drug Co.	Spencer, Phillips	7	30	30	
Gainesville	Piedmont Drug Co.	Jones	4	30	15	
Boyston	Ridgeway Drug Co.	Bennett	4		11	
Athens	Poss' Place	Smith	5	30	36	
Alberton	Herndon's Drug Store	Maxwell	3	30	16	
Madison	Atkinson Drug Co.	Akinson	4	30	8	
Greensboro	Rice Drug Co.	Crumley	4	30	10	
Washington	Moore Bros.	Corry	4	30	9	
Thomson	Gibson Drug Co.	Johnson	3	30	10	
Warrenton	Baker's Soft Drink Stand	Mangrine, Jr.	3		8	
Milledgeville	Ennis Drug Co.	Benford	4		14	
McDonough	Horton Drug Co.	Elliott	3		8	
Jackson	Woods & Carmichael Drug Co.	Maddox & Furlow	3		14	
Hoville	A. F. White Drug Co.	Harding	3	30	15	
Monticella	Jordan Drug Co.	Robinson	3	30	11	
Atonton	Belvin's Drug Store	Wheeler	2	30	14	
Montezuma	Walker Drug Co.	Walker	3	30	22	
Americus	Hook's Drug Store	Wheeler	4	30	18	
Dawson	Dawson Drug Co.	McDowell	3		9	
Cuthbert	Zuber's Soft Drink Stand	McDaniel	3		14	
Albany	Bell Drug Co.	McDaniel	4		24	
Ashburn	Ashburn Drug Co.	Faircloth	3	30	17	
Ipton	Brooks Drug Store	Thrasher	3		12	
Coultrie, Ga.	Hawkins Drug Store	Powell	3		17	
Douglas	Union Pharmacy	Coleman	3		12	
Fitzgerald	Adams Candy Kitchen	Adams	3		15	
Cilla	Ocilla Pharmacy	Smith	4		12	
Ordele	Steab's Drug Store	Hughes	3	20	15	
t. Gaines	John Brown's Place	Graham	4		30	
Ainbridge	Mills Drug Store	Welch	3	30	20	
Adel	Adel Drug Co.	Gunn	3		11	
Thomasville	Ingram Drug Co.	Pate	4		24	
Ulham	Consolidated Drug Co.	Mitchell	3	36	17	
Camilla	Stripling's Phar.	Stirpling	3		14	
Pitman	Horn Drug Co.	Dobbs	2	45	12	
Valdosta	Bergstrom & Newberg	Pope	3		18	
Waycross	Cherokee Pharmacy	Sutton	3		14	
Dallas, Texas	Southland Pharmacy	Arrant	6			60
Dallas	St. George Drug Store	McCarty and White	4	15		21
Houston	Cecil V. Rogers Drug St.	Asbell	4			32
Houston	Rouse Drug Co.	Clark	4			30
Houston	Public Drug Co.	Dent and Englands	3	25		18
Houston	Wicks & Co.	Grenillon	3	30		23
Houston	Keisling Pharmacy	Johnson	3			20
San Antonio	J. H. Wood's Drug Store	Turner	3	45		15
San Antonio	Summers Drug Co. No. 1	Walker	4		3	42
San Antonio	Quillian Confectionery	Quillian	3			28
San Antonio	Whisenant Drug Co.	Barr	3	10		21
San Antonio	Wagner Drug Store	Sample	3			29
San Antonio	Taliaferro Drug Store	Thurman	3			14
Austin	Pfeiffer's Pharmacy	Brass and Pittman	3	30	3	8
Taylor	Crescent Confectionery	George	3	20	2	18
Temple	Dalliet's Pharmacy	Wassinger	4			16
Paris	Willis & McLean	Otto	2	30		17
Indiana	Glover & Guthrie Drug Co.	Rogers	3		1	8
Indiana	Owen Matthews Drug Store	Croft	2			10
Indiana	Harper & Inabnit	Martin	2		1	12
Indiana	Harper & Inabnit	Martin	2			12
Indiana	Lawson Colson's Drug Store	Griffin	2			17

(Deposition of Sam Friend.)

I saw "Coca-Cola" advertisements in each town that I visited [678] in the nature of signs, billboards, glasses, napkins, trays, in street-cars, on fences, in soda-fountains, newspapers, and magazines. I saw it generally advertised in all of those ways. In none of the towns or cities that I visited did I see any advertisements of "Koke" or "Dope."

Yes, sir; I remember where I was on the 23d of last June. I accompanied John Cain, W. J. Cheevers, and B. J. Gillon to the saloon of Thomas Rausch in New Orleans, La., where the said John Cain asked Thomas Rausch did he remember of his calling on him in the interest of the Southern Koke Company; whereas the said Thomas Rausch said he did; Cain then asked him, "do you remember what arguments I advanced in trying to sell you 'Koke?'" and Rausch said "you tried to sell me 'Koke' and told me it was the same thing as 'Coca-Cola' and could be used as 'Coca-Cola' without the consumer knowing the difference." I then accompanied John Cain, W. J. Cheevers and B. J. Gillon to the saloon of Ed. Morero, where Cain asked Mr. Morero did he remember his calling on him in the interest of the Southern Koke Company; whereas Morero said that he did, and that the arguments that he had advanced were that "Koke" was the same thing as "Coca-Cola" and could be passed off to the consumer without the consumer knowing the difference.

In the course of my investigation, as previously described, I visited seventy-one towns, heard 997

(Deposition of Sam Friend.)

calls for "Coca-Cola," 987 calls for "dope," and 593 calls for "coke" by customers at the soda-fountain during the time of my observations. I did not hear any objections to their serving "Coca-Cola" as "coke" or "dope." I heard 692 people who asked for "dope" and 438 people who asked for "coke," asked what they meant thereby and the answer of each one of them was that they meant "Coca-Cola" exclusively. No, sir, not one of them answered that he meant anything else than "Coca-Cola."

Yes, sir; I have seen the two bottles which you are now exhibiting to me, being respectively Plaintiff's Exhibits #154 and #155, and being two bottles marked "Koke" on the crown. **[679]** I first saw them yesterday morning at 8:15 at the store of A. Conti, 2510 Elm St., Dallas, Texas, in a case of soft drink bottles. A. Conti is a dealer in soft drinks. I went in and picked up the two bottles, asked that they be sold to me, and paid for them. I have no knowledge as to where Conti procured them. The crown on the bottle has on it "Koke, trademark." It does not indicate on the crown by whom it is bottled. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #154 and #155, as evidence on its behalf.) Exhibit #155 has a crown similar to that on Exhibit 154. I first saw the bottles marked Plaintiff's Exhibits Nos. 156, 157, 158 and 159, at Paynes' soft drink stand, corner of Elm and Walton streets, Dallas, Texas, at 8:30 A. M., August 10, 1914. I saw these bottles in the case in said store and purchased them. Each of these bottles

(Deposition of Sam Friend.)

bears a label reading as follows: "'Koke'; trademark registered August 21, 1906, No. 55878, U. S. Patent office, bottled under the authority of the Koke Company of Texas, Dallas, Texas, W. McCarty Moore, President." These labels were on the bottles when I purchased them. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #156 to #159, inclusive.) The crowns on Exhibits #156 and #159, inclusive, have no inscriptions of any kind or character, or any marks of identity. They are just blank, undecorated crowns. Exhibits #154 and #155 have decorated crowns but no labels on the bottles, the crowns mentioned having the word "Koke" thereon. I first saw the bottle marked Plaintiff's Exhibit #160 on the wagon of the Crown Bottling Company of Dallas, Texas, yesterday morning at 8:35 A. M., when the wagon was standing at the corner of Elm and Walton Streets. The driver of the wagon gave that bottle to me. I asked him for it. At the time I purchased it the bottle contained a label similar to that on Exhibits #156 to #159, inclusive. There is no mark of any kind on the crown. It is just a blank undecorated crown. There are some letters blown in the bottle, but all I can make out is Crown Bottling Company, Dallas, Texas. This bottle, like the others above referred to, also contains a label that was put on by me after I purchased it as a means of identifying the bottle and as a memorandum of the circumstances surrounding the purchase. [680] (Plain-

(Deposition of Sam Friend.)

tiff here tendered and offered in evidence Plaintiff's Exhibit #160.)

Cross-examination by Mr. DART.

Yes, sir; I have been here all the time you have been taking depositions and I was here during the cross-examination of Mr. Peace. I was a detective in the Pinkerton force for three years before I joined the Coca-Cola Company, during which time I was engaged in work like that which I have here testified about, which work was done for the Coca-Cola Co. That work was carried on through the States of Virginia, West Virginia, North Carolina, South Carolina, Florida, Alabama and Mississippi. While I was with the Pinkerton force my earnings were $80 a month, and, after serving on this class of work for three years, I joined the "Coca-Cola" force about eight months ago, at a salary of $100 a month and all expenses. There is no limit put on me as to the amount of my expenses except a limit of honor. It depends entirely on me, myself, what I spend. I am sent out to get certain things and am not supposed to stint myself in getting the information desired—that is, I am not supposed to stint myself with money. You ask if it is part of my duty to search for bottles; my duties with the Coca-Cola Company are anything to the best interests of that company in every connection. It is true that the label on the bottle marked Plaintiff's Exhibit #160 is very much rumpled and that there is a lot of glue all around it. I refer to the printed label thereon, which has on it the trademark "Koke" and the

(Deposition of Sam Friend.)

other wording which I quoted a while ago. You ask if it was not rather a clumsy hand that put that label on; I couldn't tell who put that label on because I didn't. It looks like a botchy piece of work, though. I don't think the same applies to the label on Exhibit #158,—not as much so as the other one. You say you notice, however, that the glue is spread on the outside of the bottle and outside of the label; I don't know whether it's glue or what it is, it's smeary paste. There is some smeary paste outside of the label. I don't see very much glue on Exhibit #159. [681] "XQ. 40. I will show it to you, it's visible to my eye—right there where your finger is—don't scrape it off, I have a desire to keep it." "A. It looks like glue, I couldn't swear it is." You ask if the label isn't put on very clumsily; I can't say about that. The label on Exhibit #157 appears to have been put on clumsily and the glue projects on the bottle outside of the label. On Exhibit #158 a small amount of the glue is also on the outside of the label. You ask if in the course of my travels, these are the only bottles that I ran across; I never had occasion to look for them. I could have gotten a great deal more because the wagon was standing out in front loaded with them. I didn't get more because I didn't think we needed them and I couldn't carry more. You ask if I looked at them all; well, I could see from a distance. I was right at the wagon and I swear that wagon was loaded with such bottles—I don't know that they were all smeared and rumpled because I didn't examine every bottle.

(Deposition of Sam Friend.)

Dallas is the anly town where I found those things and is the only one where I had any occasion to look for them. When I got them I turned them over to Mr. Pearce. "XQ. 54. Mr. Pearce, who is acting as counsel for the "Coca-Cola" Company—he is, isn't he?" "A. I suppose he is." You say you notice that the newspaper in which these bottles are wrapped bears date May 10, 1914, and you ask how I suppose that those bottles which I bought yesterday got wrapped in a paper bearing date May 10th. There was some old papers in the hotel room that they were wrapped up in—no particular notice of the date of any paper was taken when it was wrapped up. I am stopping at the Adolphus Hotel. You ask if they have got old papers hanging around there; if you so desire, they are kept in the linen room, and if you want them you can get them. No, I did not send for them. If that paper was in the Adolphus Hotel it was not in my room. Yes, sir; I wrapped up those bottles. I did not get that paper in my room, but I got it in Mr. Pearce's room. He furnished the paper and that's the paper, so far as I know, they were wrapped up in. Yes, sir; Mr. Pearce is also traveling around the country on this same kind of work. Yes, sir; I knew him before I met him as counsel for the Coca-Cola Co. I knew him when he was superintendent of the Pinkerton National Detective [682] Agency, Atlanta, Ga. I have known him for three years,—that is, for the three years I was working for him. No, he did not become lawyer for the company about the same time

(Deposition of Sam Friend.)

I began working for the company, it was a great deal later, I think it was six or eight months later. No, I have not been with Mr. Pearce in my operations and I have not seen him operate. The labels on Exhibits #154 to #160 inclusive, which I said I put on there are in my handwriting. I wrote those labels yesterday morning, as soon as I could get to a place to write them. I wrote them in the Adolphus Hotel and the bottles had never left my possession until the labels were written.

In this New Orleans adventure with Rausch and Marero, I said that Cain did the talking,—that is, he asked the questions and the owner of the saloon replied. I don't know Mr. Morero personally, nor do I know Mr. Rausch personally. Yes, sir; Cheevers was of that party, but he did not do any talking nor did anybody else do any talking. In each instance there was a question and a reply and a question and a reply and we went away. No, sir; I do not know whether or not any stuff had been sold at either of those places. I don't know whether or not it was said that none had been sold. I don't know as a matter of fact whether any had been sold or not.

Deposition of T. C. Lupton, for Plaintiff (Recalled).

T. C. LUPTON (Recalled).

Direct Examination by General CRANE.

The paper filed as Plaintiff's Exhibit #161 purports to be a list of all the sales of bottled "Coca-Cola" which we sold on the dates therein specified. It begins March 4, 1912, and ends December 31, of

(Deposition of T. C. Lupton.)

the same year. The other two installments of the same exhibit purport to be sales from January 1st to December 31, 1913, and from January 1st to August 10, 1914. These are the exhibits which these gentlemen called for. I know that exhibit is a correct statement. Plaintiff's Exhibit #162 contains a complete list of all the orders that I received for "coke" for the year 1912. There is a total of 646 cases of "Coca-Cola" ordered as "coke" on this list. Plaintiff's Exhibit #163 consists of orders sent to the Coca-Cola Bottling Works by the parties whose names the orders bear and at the dates they bear. [683] Each of these orders calls for "coke" and each was filled with "Coca-Cola." We shipped "Coca-Cola" wherever "coke" was called for and there was no objection made on the receipt of the "Coca-Cola" as not being the article ordered. Plaintiff's Exhibit #164 shows the sales of cases of "coke" that should be "Coca-Cola" for the year 1913. Plaintiff's Exhibit #164 is a statement of the "Coca-Cola" that we shipped on orders for "coke" for the year 1913, and amounts to 120 cases. There was no complaint made that we hadn't shipped the article which they ordered. Those shipments were made upon orders directed by the people who made the orders to the Coca-Cola Bottling Works, which concern shipped "Coca-Cola" on those orders for "coke." Plaintiff's Exhibit #165 purports to be a list of the people ordering "Coca-Cola" under the name of "coke" and the amounts of their respective orders during the year 1914. These were embraced

in the orders filed yesterday as Plaintiff's Exhibit #152. During the year 1914, there were 215 cases of "Coca-Cola" shipped in response to orders for "coke." Yes, sir; I have examined the orders in the Exhibit #152 that were undated and I think Plaintiff's Exhibit #166 is a correct list of them, both as to the names of the people making those undated orders and the amounts of "Coca-Cola" shipped thereon in response to such orders. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #161 to #166, inclusive.)

Cross-examination by Mr. DART.

Yes, sir; I have made another investigation to find orders in the name of "coke" instead of "Coca-Cola." You ask if I have found them all now; well, Judge, no, sir, I don't believe we found them all. I have been working ever since I saw you, with the exception of a little spare moment I had this morning. Yes, sir; I have raked my files over and if there are any more orders for "coke" in there they have escaped my attention. I think I have got all of them now.

STIPULATION.

It is stipulated by and between the parties hereto, by their respective counsel, that Edwart T. Longstreth and C. Stanley [684] French, if called as witnesses in these cases, would testify:

C. Stanley French. Over 21 years of age. Lives in Philadelphia, Pennsylvania, being a paint manufacturer, having been so engaged for the past twenty years. He is General Manager of the firm of Samuel

H. French & Co., of Philadelphia, manufacturers of paint. The firm has had dealings with the Coca-Cola Co., of Atlanta, Georgia, having furnished them paint for the last 12 years. The color of paint sold by my firm to the Coca-Cola Company is red. The Coca-Cola Company has never varied from the color of paint ordered from us, and we have never furnished them barrel paint in any other color. We furnish the paint in half barrels and barrels. The market price of this red barrel paint furnished the Coca-Cola Company is three cents per pound a barrel. There are other barrel paints of other colors than red which are just as cheap as red barrel paint sold by us to the Coca-Cola Company—for example, browns, and yellows,—the general market price of which is the same as the red. The Coca-Cola Company has always been very particular in having a specific shade of red and require that that particular shade be furnished every time. We recognize in our factory that it is necessary always to make their standard shade. The Coca-Cola Company has within the past three years practically consumed our entire output. This particular red is made for painting barrels and kegs. This paint is prepared specially under our own formula, with care. Other manufacturers make red barrel paint. The class of paint manufactured by us for the Coca-Cola Company is of superior quality, due to the process of manufacture and the shade of color manufactured has been practically adhered to by us. The shade that we have been furnishing the Coca-Cola Company is not generally used for painting barrels or kegs.

Edward T. Longstreth, 38 years old. Is with the firm of Samuel H. French & Company, of Philadelphia, being factory manager of said firm, and originally produced the paint furnished the Coca-Cola Company, and is familiar with the composition of paint manufactured by this firm. [685] His firm has had dealings with the Coca-Cola Company and has furnished them paint for the past 10 or 12 years. The paint manufactured and sold to the Coca-Cola Company is red. They have never purchased from us any other shade than red, or any other color of barrel paint than red. There is just one fixed shade of red that they have purchased. I am familiar with the process and colors of barrel paint to a general extent. The regular market price of red barrel paint furnished by use to the Coca-Cola Company is three cents per pound. There are barrel shades of other colors that are just as cheap as red, in fact, cheaper than the red supplied by use to the Coca-Cola Company, as, for example, browns and yellows. When the Coca-Cola Company started to do business with us they adopted a certain shade of red that we made, as their standard, which they have adhered to in all purchases of paint from us. They have always been particular that no variation from this shade or quality of paint should be made, and with that fact in view, they have always been willing to pay us a higher price to maintain this standard. We, on our part, have always maintained the high quality and shade of paint which was adopted by them as their standard when they originally started business with us.

It is agreed that the above and foregoing testimony may be used as evidence by the Coca-Cola Company as if the witnesses themselves were present for the purpose of examination and so testified.

(The depositions of the following witnesses were taken at Chicago, Illinois, August 17, 1914:)

Deposition of William G. Mansfield, for Plaintiff.

WILLIAM G. MANSFIELD.

Direct Examination by Mr. ROGERS.

I am 22 years of age, live in Chicago and am employed by the Quaker Oats Co. Yes, sir; I recollect answering an advertisement in the "Chicago Tribune" about the middle of April a year ago. The slip which you show me, being Plaintiff's Exhibit #165, I can identify absolutely; it is the advertisement to which I refer in the "Chicago Tribune." I answered it and received an answer from Mr. E. M. Boyd. [686] On Monday morning I called on him at the Palmer House at Chicago. I met him and he shook hands with me and told me he had a good proposition for investment and told me to call around 12 o'clock and we would have dinner and he would then explain the whole proposition. I called at the appointed hour and Mr. Lon Ware joined us and the three of us had dinner at the States Restaurant. By the three of us I mean Mr. Boyd, Mr. Ware and myself. Mr. Boyd told me that he had a formula exactly the same as that of "Coca-Cola." He told me he was selling eight per cent cumulative preferred stock at par and was giving a bonus of common stock

(Deposition of William G. Mansfield.)
to the druggists who dealt in his "Koke," which was a product manufactured by the Western Koke Company, which concern Mr. Boyd was representing. I then told him I thought there would be quite a good deal of competition on account of his formula being the same as "Coca-Cola"; but he argued that there would not, as he would not have to do any advertising and when a person comes into the drug-store and asks for "Coca-Cola" the druggist will give him "Koke," the customer not knowing the difference. I told him that I knew the Coca-Cola Company did a great deal of advertising and spent a great deal of money. He told me that the Western Koke Company would not have to advertise, because the formula was just the same as "Coca-Cola" and when a customer comes into the drug-store he would not know the difference. You ask if anything was said about the sale of his, Boyd's, product, in response to requests for "Coca-Cola"; yes, sir, I gave that. A customer wouldn't know the difference. The only other conversation I had with him was about the stock; I talked to him about the stock. No, sir; I did not make any investment. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #167, being the advertisement from the "Chicago Tribune" April 18, 1913.)

Cross-examination by Mr. LITTLETON.

I am at present a clerk of the Quaker Oats Company and have been with that company since November 1, 1913. [687] In October, 1913, I was with the Middle West Utilities Company, occupying the posi-

(Deposition of William G. Mansfield.)

tion of clerk. I am 22 years old. The position I was seeking with Mr. Boyd was that of an officer of the company, something similar to that. You ask if, when Mr. Boyd came here to Chicago looking for a business manager, he came to a young man 20 years old to make him general manager of this western territory; no, he was not going to make me that. He represented to me that he was going to make this Mr. Lon Ware manager, and I was to assist him, according to what he said. No, sir; he did not say anything to me about the pay I was going to get. We finally did not get together and did not make any arrangements. Yes, sir; it surely is a fact that Mr. Boyd told me that druggists and dealers could sell this when people asked for "Koke," that the name of this product was "Koke" and that when people asked for "Koke" they could sell it as such. He told me that when a person came in and asked for "Koke" after they got used to the name, of course, they would use it and sell it as such, and, also, "Coca-Cola" when a customer came in. Yes, sir; I am certain he said that they could sell it when people asked for "Coca-Cola." I don't know where Mr. Ware lives. I only met him then. I don't know whether he is a native of Chicago or not. That was the only time I saw him in company with Mr. Boyd. He was present and heard all that I heard, and if Mr. Boyd had made any statements to me that this product "Koke" could be substituted and a fraud practiced upon the public by selling it when people asked for "Coca-Cola," Mr. Ware was there and heard it, too. You

(Deposition of William G. Mansfield.)

ask how it happened that Mr. Boyd unfolded to me this fraudulent scheme—me, an utter stranger; he was almost sure I would invest money in it. You ask if he thought I, a young man twenty years old, was a capitalist; he thought I had some money, sure. Yes, sir; I was a stranger to him before that. I just came in answer to this advertisement and he then unfolded a fraudulent scheme to a total stranger. You ask if he did that with the idea that a young man twenty years old would be able to finance this thing; he did not think I would finance it; he thought I would put in one or two thousand dollars. [688] He wanted to sell stock to various people. Yes, sir, he deliberately came up here and unfolded to me, an utter stranger, a fraudulent scheme and did all this in the presence of a third party.

Redirect Examination by Mr. ROGERS.

Yes, sir; I answered this advertisement in the "Tribune." Boyd did not look me up, or anything of that kind, so far as I know. I did not give him any references or anything. Then he wrote me a letter and then we had a meeting.

Recross-examination by Mr. LITTLETON.

I do not know who Mr. Boyd was and do not know of my own knowledge that he had any connection with the Koke Company, excepting what he told me. No, I don't know whether he is the same E. M. Boyd who is now connected with those companies or not, unless I see him, I could tell then. I have not seen him for over a year. For all I know, except for his statement, he may have been a Pinkerton Detective.

(Deposition of William G. Mansfield.)

Redirect Examination by Mr. ROGERS.

No, sir; I have no interest in this controversy.

Recross-examination by Mr. LITTLETON.

The information which I possess got into the possession of Mr. Rogers through Mr. Wilkins, who wrote me a letter. Mr. Rogers told me that he got my name from some detective agency. I then gave this information to Mr. Wilkins, the gentleman sitting here, who is an investigator for the Coca-Cola Co. I told him about it because he asked me for the information. I presume he knew that I had this information through the detective agency. I don't know how the detective agency found out about it; I would like to know myself. I do not see how they got my name. Mr. Wilkins asked me about this about three or four weeks ago. I volunteered the information and have come here voluntarily and not by summons. Mr. Rogers just told me to come up. Yes, sir; I am just here upon the request of the attorneys of the Coca-Cola Company,—that is Mr. Rogers. I want to help them in any way I can.

Deposition of George H. Wilkins, for Plaintiff.

GEORGE H. WILKINS. [689]

Direct Examination by Mr. ROGERS.

I am 38 years of age, reside at 3220 Warren Ave., Chicago, Ill. I am an investigator employed by Reed & Rogers, by whom I have been employed intermittently for about six or seven years. I made an investigation in August, 1913, for the Coca-Cola Company, under the instructions of Messrs. Reed & Rogers. I

(Deposition of George H. Wilkins.)
went to New Orleans first. The first party I saw was Mr. Cheevers on St. Charles Ave., New Orleans, ex-saleman for the Koke Company of New Orleans, the exact name of which is the Southern Koke Company, and it is located on Highland Avenue, I forget what number in New Orleans. I met a man named J. C. Mayfield at New Orleans in connection with this investigation. It was introduced to him by Mr. Cheevers in his office on Highland St. Plaintiff's exhibit #168 is a photograph which I took after conversation with Mr. Mayfield and Mrs. Mayfield, with Mr. Cheevers present. I asked them to step out of the doorway and I photographed the place. Mr. Mayfield is in that picture dressed in the light suit, white I guess. I saw Mr. Mayfield for the first time on August 27, 1913. After being introduced by Mr. Cheevers, I told Mr. Mayfield I would like to get some of the literature of the Southern Koke Company, some of the printed matter. He said "we have very little but here is a perspective," and gave me one, which is filed as Plaintiff's Exhibit #169. No, I did not identify it in any way when he handed it to me. Shortly after that I wrote my name and the date across the face. My name appears on Exhibit #169 and I identify that as the perspective Mr. Mayfield gave me. Mr. Mayfield wanted to know what I wanted the stuff for. I told him I thought of investing some money in a soft drink enterprise such as he had. He said "well, I own three-fourth's interest in the 'Coca-Cola' formula." I said "well, you must be a very rich man then."

(Deposition of George H. Wilkins.)

He said "well, I have never made any money out of it, but here is what I will give you." He handed me a slip, which is known as the Pemberton slip, and is filed as Plaintiff's Exhibit #170. I wrote my name and address on the face of that Exhibit as soon as I left the place and by that means identify Exhibit #170 as the one which Mr. Mayfield gave me. Mr. Mayfield gave me a tag and an envelope and a subscription blank and a stock certificate at that time and a post card. **[690]** Plaintiff's Exhibit #171 being a postal card addressed to the Southern Koke Company, Ltd., is the post-card Mr. Mayfield handed me. I wrote my name and the date across the back of the card as soon as I left the place. Plaintiff's Exhibit #172 is a stock subscription blank which I identify in the same manner. As soon as I left the place I wrote my name and the date across the face of it. That is the stock subscription blank to which I refer. Plaintiff's Exhibit #173 is a slip Mr. Mayfield handed me showing what business they did in Texas. It is called the drug-store slip. I wrote my name and the date across the face of that. Plaintiff's Exhibit #174 is a contract between the Koke Company of America and the Southern Koke Company, Ltd., which Mr. Mayfield handed me. He told me that was a contract which he gave out for people to use his product, the syrup. I wrote my name across the face of it. Plaintiff's Exhibit #175 is a shipping tag, which Mr. Mayfield handed me. I put it in my pocket and wrote my name across the face of it. The envelope marked Plaintiff's Exhibit

(Deposition of George H. Wilkins.)

#176 I identify in the same manner. I got that from Mr. Mayfield also. The card filed as Plaintiff's Exhibit #177 I got from Mr. Cheevers and wrote my name across the face of it. I received the contract, printed form, having across the top, "Southern Koke Company, Ltd.," which is filed as Plaintiff's Exhibit #178, from Mr. Cheevers and marked my name and the date across the face of it. The stock certificate marked Plaintiff's Exhibit #179 I also received from Mr. Cheevers and marked my name and the date across the face of it. I had a conversation with Mr. Mayfield with respect to the contract of the Southern Koke Company, Ltd. I asked Mr. Mayfield if they were doing any advertising, and he said, "No, I have spent several fortunes in advertising and now I am going to retrench. I am not going to do any advertising for 'Koke.' 'Coca-Cola' has spent millions in advertising and every dollar they spend helps 'Koke.'" I asked him how that was, and he said that lots of people asked for "coke" when they meant "Coca-Cola" but they could not help that; that the "Coca-Cola" also sold their product as "Koke" but that he would stop that later and that his bottle and label was the same as "Cola-Cola" and lots of people thought it was "Coca-Cola." **[691]** When I was in this building of the Southern Koke Company, Ltd., I observed in the rear part of the building,—it's on the main floor away from the office,—there were ten barrels all painted red and on the top of one was a "Coca-Cola" label. There were several barrels

(Deposition of George H. Wilkins.)

standing outside and the rest of them were inside. All of these barrels were dark red, a sort of brownish red. In company with Mr. Cheevers, I went to the store called Clark's Grocery Store and asked for a bottle of "Coca-Cola" to take out. The woman waited on me and gave me the bottle filed as Plaintiff's Exhibit #180, which I put in my pocket. As soon as I got out I put a tag on it and marked it for identification. It is a "Koke" bottle labeled "Koke" and on the cap of the bottle is the word "K-O-K-E." I marked on the face of the bottle first until I got to the street-car, and then put the tag on it. This writing on the label, and the tag, is mine. Accompanied by Mr. J. C. O'Neil, I went into the Comus and asked for a drink of "Coca-Cola." The bartender served me with a drink. I could not determine what it was he served me with. It didn't taste exactly right, it was a little bit warm. I asked him if it was "Coca-Cola." He said, "yes," and reached down under the counter and pulled up a bottle of "Coca-Cola." It was alright. I returned to the Comus about noon-time and the same bartender was there, but there was another one down a little further. I went to the other one and he did the same thing. I could not see the label because he covered it with his hand. He poured out the drink, but the bottle looked like an Appollinaris bottle. I went in later with Mr. O'Neil and bought a drink also for him. I asked for two bottles of "Coca-Cola" to take out. He wrapped two bottles in a newspaper and I did not open them until I got

(Deposition of George H. Wilkins.)
outside. I opened them in the presence of Mr. O'Neil and took them across to the Gruenwald and labeled them there. The bottles filed as Plaintiff's Exhibits #181 and #182, are the ones to which I refer. I was instructed, in making this investigation, to look out for any advertising of any product under the name of "Koke," and in a very few cases I did observe such advertising. The first place I saw it was back in the wine-room of a saloon. I saw two oblong cards, a yellow and a white one. [692] The saloon was the Bandera, right across the street from the Koke Bottling Works. We went to the back room and asked for a drink of "Coca-Cola." He informed us that he had none and had not had any for a year. I asked him what the signs were doing there. He said, "Well, they are no good." I took them from the wall and identified them by writing on them. Plaintiff's Exhibit #183 are the signs to which I have reference. Plaintiff's Exhibit #184 is a lozenge-shaped sign bearing on both sides the word "Koke." This is the sign which I saw but twice. I do not remember exactly where I got it, but it was in one of the places where they had some "Koke" but did not sell it any longer. I wrote my name and date on one side of the sign. I got this sign in New Orleans. I also saw a similar sign hanging in the window of the Southern Koke Co. On Mr. Mayfield's desk was an oval tin sign with a celluloid face with the word "Koke" on it and some other words around it. I did not see any signs bearing the word "Koke"

(Deposition of George H. Wilkins.)

in any other, place except the two oblong signs Exhibit #183, the diamond-shaped sign marked Exhibit #184, and the oval metal sign on Mr. Mayfield's desk. I looked particularly every place I went for "Koke" advertisements and, with the exception above stated, I saw none.

From New Orleans I went to Dallas, Texas. Plaintiff's Exhibit #185 is a letter signed by J. C. Mayfield, which he gave me at his own suggestion. It is addressed to J. G. Van Winkle, Secretary, Texas Koke Company, 1624 Bryan St., Dallas, Texas, and is dated August 29, 1913. I presented that letter to Mr. Van Winkle the day after it was dated. I went directly to the office of the Texas Koke Company within half an hour after arriving in Dallas. In the building there was a six hundred gallon mixing tank with a motor. I think it was belt driven, but a motor drove the line shaft. There were, as near as I could judge, about one hundred barrels altogether in the building. Most of them were red. There were a few that were not red, which were in the process of being painted a dark red by one of the six negroes employed there. When I was standing in the office probably eight or ten feet from the partition, which was half wood and half glass, I saw barrels piled up to the ceiling of the office and facing **[693]** anyone who would look that way was a barrel with a label on the head, "Coca-Cola." It was a "Coca-Cola" barrel label with a couple of marks through it. Looked as though a scratcher was run across the face of it. I

(Deposition of George H. Wilkins.)

told Mr. Van Winkle I thought of investing some money in the New Orleans proposition, and that I came over with this letter from Mr. Mayfield with the intention of finding out why they were successful and how they did business. Mr. Van Winkle told me that it was a good proposition and that the Texas Koke Company were making money and had paid one eight per cent dividend and were doing quite a lot of business and practically shipped all they could make and handle; and, of course, being in the busy season, or the best season for soft drinks, they were busier than any other time; that they were selling their entire product and had sold—I asked just how many gallons he sold, but it was not far from the neighborhood of 100,000 gallons of syrup. I asked him how he made his syrup and he took me back and showed me the tank the second time. The first time Mr. Nason showed it to me. I met Mr. Nason in the office, being introduced to him by Mr. Van Winkle, who said "Mr. Nason, explain to him about the way we sell the stuff." Mr. Nason showed me a map back of the store with a number of flat headed tacks stuck under there. He said, "every one of those towns represent an agency." It was a small drawer map of Texas with practically the Northeastern part full of pins, a pin in almost every town. I left the office with Mr. Nason and went down to the bank. He said he was going to the bank and I told him I wanted to go to the hotel and clean up. I made an engagement with Mr. Van Winkle for 2:30 in the afternoon and I went down with Mr.

(Deposition of George H. Wilkins.)

Nason at eleven o'clock or shortly after that. I got into conversation with Mr. Nason, and, among other things, asked him how he was selling "Koke." He said, "Well, lots of people ask for 'coke' when they mean 'Coca-Cola' and they do not know there is any such drink as 'K-O-K-E.' Of course, we can't stop that; if they want to do that we can't help it. We sell this product as 'Koke,' and, if they want to substitute it, that is their business." **[694]** I then asked him why there was such a demand for "Koke." He said, "well, lots of people ask for 'Coca-Cola' as 'coke' and 'dope' and other names." He said some other names, but I did not pay much attention. He left me and walked into the bank and I told him I would see him later, and went back to the hotel and had luncheon. At about 2:30 I went back to the office of the Texas Koke Company on Bryan Street. Mr. Van Winkle was there and I told him I wanted to find out how much business they did. He asked me if I knew anything about accounting, and, when I told him I did, he opened his ledger and put it in front of me. I went over his ledger and determined from his merchandise and sales account that he did during the twelve months term prior to that about $34,000 worth of business. I went over it very carefully and took my time. The only thing I was after was the total amount, so I did not make any memorandum, excepting the $34,000. I then asked him where his customers were. He said his contract called for the State of Texas and that all his customers were in that State. I asked

(Deposition of George H. Wilkins.)

him Mr. Nason's position and he said "he is a salesman and a good one. He has the Northeastern section of Texas for his territory." I asked him to show me a list of his customers. He pointed to a set of card-index drawers to my left, as I was sitting at the desk in front. I asked permission to inspect the drawers and he said, "help yourself." I opened the drawers and glanced through, and almost every county in Eastern Texas there was a name and on some cards there was a number. I asked him what that number meant and he said, "that is the number of gallons this man got last month." I asked Mr. Van Winkle why he shipped the stuff in those barrels. He laughed and said, "Well, I would rather have 'Coca-Cola' barrels than anything else, to ship this product in. I pay a dollar apiece for the 'Coca-Cola' barrels." I told him I had positive knowledge that they were for sale at sixty-five cents apiece in New Orleans. He said, "you can make more money by shipping me barrels than any other way I know. You go to New Orleans and ship me 'Coca-Cola' barrels as good as new, or the best you can get, and I will pay you a dollar apiece for them." [695] After examining these drawers of cards containing customers' names, I asked Mr. Van Winkle for advertising matter. There was quite a little on the desk and he told me to help myself. I took one of each kind of advertising matter before me. Those that I did not see readily he helped me to. For instance, the bill of lading. He tore a triplicate sheet out of his bill of lading book, saying that he had had

(Deposition of George H. Wilkins.)

those printed for his own special benefit. Plaintiff's Exhibit #186 is a bundle of slips, envelopes and sheets of paper. It is the advertising matter which I obtained from Mr. Van Winkle at the time of my visit on August 30, 1913, and is the advertising about which I have been testifying, as given me by Mr. Van Winkle. There are fifteen sheets and I identify them because I think in every instance my name and the date is on the face or the back of each sheet. There was no other advertising matter, unless you would term a bottle advertising. I saw a bottle standing on Mr. Van Winkle's desk, which was an ordinary type of dispensing bottle commonly used at soda-fountains. That is the bottle I refer to. I asked Mr. Van Winkle if they put out any of those, pointing to the bottle. He said, "yes, we have ordered several thousand of these and as yet we haven't any—we have a few." I asked him where he got them, but I don't remember where he said he got them from. On the face of the bottle blown in on the label was the word "Koke"—"K-O-K-E." He gave me a bottle, which I wrapped up, and told me they cost 22¢ apiece. I offered him a quarter, but he refused it. I kept the bottle, tagged it, brought it back to Chicago and had it photographed. The photograph which is attached to the bill of complaint in these cases is the photograph of that dispensing bottle. It is on the same sheet with the photograph of the "Coca-Cola" dispensing bottle. I thoroughly covered Dallas to see if I could see any advertisement of any product under the name of

(Deposition of George H. Wilkins.)

"Koke" but I found nothing of that kind. I left Dallas on September first on the trolley and went over to Ft. Worth. I first called on Mr. Lupton, the local bottler of "Coca-Cola," who said he had quite a little trouble in selling some people and that his drivers had reported that some people were substituters. I got a list from him, but it was a very old one. **[696]** He had an idea that the matter was entirely settled and disposed of. I went over the list, which consisted of some eighty or ninety saloons, soft-drink stands, confectioners and druggists, with the following result:

I called on the Sanitary Company, Weatherford and Throckmorton Sts., Ft. Worth, Texas, on September 1st, at suggestion of Mr. Lupton, and asked for a bottle of "Coca-Cola" to take out. The clerk handed me a bottle which I wrapped up in a newspaper, which was lying on the counter, and put it in my pocket and went out. As soon as I got out I showed Mr. Lupton the bottle and immediately put a tag on it and labeled it as per of the label attached to the bottle, filed as Plaintiff's Exhibit #187, which is the bottle I purchased at the Sanitary Company, as above stated, in response to a request for "Coca-Cola." No explanation was made, and nothing was said by the person who waited on me, to indicate that what was being given me was not "Coca-Cola." I have related everything that occurred as near as I can tell. Mr. Lupton informed me that the public park had a concession which operated daily. I got on the street-car and went to this park, which was

(Deposition of George H. Wilkins.)

called Trinity Park. It was on the edge of town and was quite a large one. In the center was a soft-drink stand or concession, as it was called, run by Mr. Frank Ford. I went to the clerk and asked for a bottle of "Coca-Cola." I forgot to tell him that I wanted to take it with me and so he opened the bottle. I paid for the drink and drank it and then told him I would like to take a bottle along, whereupon he handed me the bottle. I asked him if it was "Coca-Cola" and he said, yes. I put the bottle in my pocket, paid for it and went to a bench in the park and wrote out the tag and attached it. The bottle with the tag attached, filed as Plaintiff's Exhibit #188, is the bottle which I purchased on this occasion. Nothing was said to me to indicate that what I was getting was not "Coca-Cola." Leaving Ft. Worth, I stopped at what was known as Lake Erie, which was a sort of public amusement park on the trolley road from Galveston to Ft. Worth. This station was named Handley, Texas. I arrived there in a sort of stockade, where the passengers all had to pass through a concession which was run by a man named Tom Bunch. **[697]** I stopped at a counter and asked for a glass of "Coca-Cola." A young man in charge said "we haven't any." I said, "All right," and started to walk away. Another young man, who was behind the candy counter a little further back, said "Wait a minute; what do you want?" I said, "I want 'Coca-Cola' and the young man said they hadn't any." He said "We have lots of it." He called the young man, who told me that they had

(Deposition of George H. Wilkins.)

none, back of the counter, picked up a bottle from underneath the counter and showed it to him and said something to him which I could not catch and the young fellow brought the bottle up, pulled off the top and served me with a drink. I drank it, paid him, and asked if I could have a couple of bottles to take with me. He handed me two bottles unwrapped. I went over to a table and sat down to wait for a train, and while there a young lady asked for a glass of "Coca-Cola." The young man, who waited on me, pulled off the top of the bottle and it fell off the counter and rolled around. I put my foot on it, picked it up, looked at it, took out my fountain pen and marked on the inside "G. W." and put it in my pocket. The cap filed as Plaintiff's Exhibit #190 is the one to which I refer. I then went inside the grounds and sought the other soft-drink concession which was also run by Tom Bunch. I walked up to the stand and asked for a glass of "Coca-Cola." The young man picked up a bottle, yanked off the top and poured out, holding his hand over the bottle so that I could not see what it was. I drank it and asked for two bottles to take with me. He got two bottles and wrapped them up in a newspaper. I put them in my pocket and left. I put on the tags and marked them prior to putting the bottles in my grip. The bottle filed as Plaintiff's Exhibit #191 is one of the bottles to which I refer. The other bottle broke in my grip. It had a cap on it just exactly the same as Exhibit #191, with the word "Koke" on it. Nothing was said to me by the

(Deposition of George H. Wilkins.)

dispenser on any of the occasions I have testified to with respect to my purchases of bottles numbers 189 and 191, that what I was getting was not "Coca-Cola." I distinctly asked for "Coca-Cola" in each instance. [698] I saw no advertising in these parks, or at Lake Erie, of soft drinks of any kind, and I saw no advertisement of any drink under the name "Koke." Yes, sir; I saw a drink advertised under the name "Coca-Cola" in New Orleans, Dallas and Ft. Worth and in almost every place. These various documents, bottles, and the like, all have dates on them and those dates were put on at the date that I got the stuff in every instance and actually represent the dates on which I got the stuff. After leaving Dallas and Ft. Worth I stopped at Little Rock for about five hours between trains and then went to St. Louis. I saw "Coca-Cola" advertised in Little Rock but did not see advertising there of any product under the name of "Koke." I went especially to look, because I had heard they were operating in Arkansas. I saw no advertising under the name "koke" or "dope," but I saw "Coca-Cola" advertised in almost every place. The conspicuous feature of such "Coca-Cola" advertising as I saw was the words "Coca-Cola" in red and in a peculiar script. At St. Louis I called on Mr. Van Deusen. The card filed as Plaintiff's Exhibit #192 is one which Mr. Van Deusen gave me himself in his house. His house and laboratory are located at 4178 Cleveland Avenue. I told Mr. Van Deusen that I was interested in the soft-drink proposition and thought

(Deposition of George H. Wilkins.)
of putting some money into the enterprise in New Orleans and that Mr. Mayfield had given me a letter to Mr. Van Winkle, which I presented to him. He read the letter, returned it to me and said, "Yes, that is Mr. Mayfield's handwriting; what can I do for you?" I told him I was interested in "Koke" and would like to find out something about it and asked him if they made the syrup there. He said "no, we make the extract here. The syrup is made by the local company. We ship them the extract in barrel lots as they order it and they make syrup out of it by adding water, sugar and glycerine. He told me the amount added and I wrote it and copied it in the report which I afterwards dictated. I asked him if he sold much of it and he said, yes. I asked him how much he sold in New Orleans and he showed me his duplicate invoice book, showing his New Orleans shipments. I copied the amounts starting with February, 1913, and up to September 3d, or 4th, 1913, and he had shipped them on an average of 2¼ barrels per month. I asked Mr. Van Deusen if he had a contract for making "Koke" extract. He said "no, I haven't any contract, but I make it anyway. [699] I don't need a contract." I asked him how he came to make it. He said, "about six years ago, Mr. J. C. Mayfield came to me and gave me a formula and said he had had more or less trouble with it and asked what I could do with it. I looked it over carefully and told him I thought I could make a good extract out of it. Mr. Mayfield said "All right, go ahead. I have had so much trouble with it, I want

(Deposition of George H. Wilkins.)

to get somebody to put a lot of care and attention to it." Mr. Van Deusen then told me he did not see Mr. Mayfield for about a year. He said he had manufactured small quantities of it with a pretty good degree of success, they never had had any complaint about it, and that once in a while Mr. Mayfield would send him in a check, which just about took care of the account and then he would not hear any more of him until he owed him some more money and then he would go after him again; that Mr. Mayfield had started the two companies, the Southern Koke Company at New Orleans, and the Koke Company of Texas, at Dallas, and from his orders he did not think the New Orleans Company was getting along very successfully,—also, from other things; that while Mr. Scott was alive the company seemed prosperous, and, after Mr. Scott died, a man named Wm. Dalton took Mr. Scott's place and that he went after the company for payment of his bill, which was quite a large amount, and Mr. Dalton wrote him a letter and said unless they had some time he might as well known the truth, that the company was in no shape to go ahead unless they got more finances and more time from Mr. Van Deusen to pay the bill. I did not see that letter. Mr. Van Deusen told me about it. I commented on the fact that Dallas was doing a good business from Mr. Mayfield's talk. He said, "Yes, they have paid an eight per cent dividend." He also told me about the formula. Mr. Mayfield had the formula, and he had a copy, and a copy was also put in escrow with some Trust Com-

(Deposition of George H. Wilkins.)

pany in St. Louis, Mo., available to both Mr. Mayfield and Mr. Van Deusen. I asked Mr. Van Deusen if that was the only place this was sold. He said "No, I sell some to the Brewing Company in Danville and Richmond. There it is called 'Celery-Cola' and it is practically the same formula, except there is a little more celery added to it." I just recollect the name of that Brewing Company,—Portner Bros. Brewing Co. [700] I asked Mr. Van Deusen if it was not a fact that people asked for "coke" when they wanted and meant "Coca-Cola." He said, yes, but then you couldn't help taking advantage of people when they didn't know any more than that. I looked around St. Louis to see if there were any advertisements displayed of any product under the name "Koke," but I did not find any. I saw "Coca-Cola" advertising there, however, in many places. The distinct and characteristic feature of it was the script name "Coca-Cola" in red. Mr. Van Deusen said "Koke" was sold at a less price than "Coca-Cola" and that helped sell it. I believe I suggested that would help sell it, and he said, yes. I have never seen any advertising around Chicago of the word "Koke," or of any product under the name "koke," except what I brought in myself. I have seen "Coca-Cola" advertising in many places around Chicago. It is of the same general character as that which I saw in other places.

Cross-examination by Mr. LITTLETON.

I have been in the employ of Reed and Rogers as a detective from five to six years, intermittently. I

(Deposition of George H. Wilkins.)

say intermittently because I used to maintain my own office and did detective work like this for patent attorneys and trademark and copyright attorneys. Yes, I have studied law after a fashion, but have never been admitted to the Bar. Before I was connected with Messrs. Reed and Rogers I never did but one thing in this line of work and that was for the American Sugar Refining Company and that was in the line of accounting. I have done quite a lot of accounting. There is probably not more than a half dozen law firms in this city that I ever did any work for. They represent the majority of the national and international advertisers, outside of the patent attorneys, and only one set of patent attorneys. I have my own personal record, the ledger here, probably some 250 or 300 firms I have worked for. I am now a detective and have been since I have been in the employ of Reed and Rogers. I was sent out by them with specific instructions to get specific information for use in this case, and I focused my mind on getting evidence to help the company. Of course, I did all in my power while out on this trip, and raked the country over to gather all the evidence I could to assist the Coca-Cola Company, in the places where they told me to go. **[701]** I was on this during I think, a little over two weeks. The Coca-Cola Company paid the expenses of the trip indirectly, but I got it from Reed and Rogers. I get a per diem on the job. You ask if it is not to my interest to get the kind of information I go out for because it assists my reputation as a competent

(Deposition of George H. Wilkins.)

detective. No, I get whatever exists. Of course, it is to my interest to get the sort of information I want, if I can get it. Now if I went out repeatedly and did not deliver the goods I would soon lose my job. If information existed, I got it, but if it did not, I did not manufacture it, that is what I want to convey. Yes, sir; I said I went to New Orleans first. No, I did not misrepresent my name. I did not say that my name was G. Walton. I didn't tell him anything. I was introduced by Mr. Cheevers to Mr. Mayfield as Mr. Walton. No, I did not get Cheevers to do the deception, I did not ask him to do that. I asked him afterwards why he did it and he said he thought it best. I always travel under my own name. No, Cheevers was not in the employ of the company. I heard he was a disgruntled employe who had been pretty close to Mr. Scott and was no longer connected with them, and that is how I happened to get hold of him. I explained to Cheevers who I was and what I wanted and that I was there in this capacity as a detective, and I interested Cheevers in helping me. I asked him to help me, which he agreed to do. You ask if I interested Cheevers in going around betraying his former employer; call it anything you want to, I don't care. "XQ. 209. Thereupon he was so anxious to soak his former employers that he assisted you to the extent of introducing you under an assumed name so that they would not get knowledge of the fact that you were a detective?" "A. You put that in a peculiar way." "XQ. 210. It is true, isn't it?" "A. No, he didn't

(Deposition of George H. Wilkins.)

have it in for him at all. He shook hands with Mr. Mayfield when they met." "XQ. 211. He was sleek on the surface, he was doing the Judas Iscariot act?" "A. I couldn't say. I never knew Mr. Mayfield or Mr. Cheevers before I saw them there. I asked Mr. Cheevers to assist me because he was a formed saloon-keeper and a former salesman,—had sold this stuff. I had a list of several people. Mr. Cheevers was the first one I went to." **[702]** It was I who told Mr. Mayfield that I was going to be interested in the "Koke" business. That was a pretext to carry out the deception, and Mr. Cheevers, in assisting to carry out this pretext said that I was Mr. Walton. Cheevers wanted to help me out. You ask if he wanted to help me out, knowing that by so doing he would be injuring the company; I don't know what he knew or what he suspected, but he helped me out. I suppose that was the result of his act, I don't know. I had this conversation with Mr. Mayfield, August 27, 1913. I purchased these three green bottles, Exhibits #180, #181, and #182, in New Orleans. I took these bottles out with me after buying them because I wanted evidence that they were substituting and selling "Koke." When I bought these bottles I knew all the time by looking at the bottles that they were not "Coca-Cola"—yes, sir; when I saw the bottle I did But in the case of the Comus I did not see the bottle. The man wrapped it in a newspaper and handed it to me. No, I would not know whether it was a bottle of "Koke" or of ginger beer, if it was wrapped in a news-

(Deposition of George H. Wilkins.)
paper. When I saw the bottle I knew it was not "Coca-Cola." In the place where I did see the bottle before purchasing same, or at the time of my purchase, I knew it was not "Coca-Cola" I was purchasing, that is why I wanted the bottle. When I moved over to Dallas, Mr. Lupton gave me a list of people who were supposed infringers of "Coca-Cola." He told me that the list was made up from lists of people whose names the various drivers had turned in that were handling "Koke" and not "Coca-Cola," or who had quit handling "Coca-Cola." I have not kept a copy of that list now. The list for Dallas had probably 70 or 80 names as near as I can judge, it covered more than one sheet of paper and then there was some more in Ft. Worth. I got the Ft. Worth list from the bottler there, who claimed the same trouble. I bought two bottles in Ft. Worth and two in Handley. I did not find a bottle of "Koke" for sale in Dallas. In many places in Dallas I not only asked for "Coca-Cola" but I asked if they had "Koke" and they didn't have either. I went to every soft drink place and saloon and stand and confectionery and drug-store on the three or four main streets that I have noted in my report, and then these special places for syrup, got samples of syrup, and in the places noted especially in former reports, where people had been supposed to have carried "Koke." **[703]** I did not say that they never had handled it. I said they did not have it at the time I called, namely; in September, 1913. You ask if it is true that on the three principal

(Deposition of George H. Wilkins.)

streets in Dallas there are nothing but soda-fountains and no bottlers; no, that is not true. There are more saloons than any in the list, more than any other business. I did not see any moving picture shows on the main streets, but on the side streets there are a number of them.

I said these barrels which I saw in the back of both the New Orleans office and the Dallas office of the Koke Companies were painted dark red. In New Orleans I saw one "Coca-Cola" barrel standing outside with the "Coca-Cola" hard label on it intact. At the Dallas office I saw probably more than one. I saw one with some paper on it, but I could not see the whole barrel. They were all of dark red color, as near as I could tell. They were not a light pink color at all, nor a light pinkish red color. No, they did not have a kind of milkish pink color. You ask me to look at the two bottles which I bought in Ft. Worth; namely, Exhibits #187 and #188 and the two which I bought in Handley, namely; Exhibits #189 and #191; and to state what the difference is in the color of the substances contained therein; the two bottles in Ft. Worth look very much darker now than the bottles purchased in Handley. The latter are pretty near the color of ginger-ale. They will break very easily, don't shake them. They are what I would call a straw color. Those purchased in Ft. Worth have more of a reddish color. Of course, I do not know of my own knowledge who bottled these products, only by labels on the bottles. I do not know the contents of those bottles and do not know a

(Deposition of George H. Wilkins.)
thing about that. I do not know whether they were put up in the bottles by or under the authority of the Coca-Cola Company or any of its licensees. I do not know whether the people who bought these bottles, or the man who put them in the bottles, got hold of "Koke" labels or "Koke" crowns in some way and put them on some other substances. So far as I know, this stuff I bought at Handley might be a home-made root beer, but what I drank there was not. No, I couldn't tell that it was not "Coca-Cola" in all cases. It depends upon what condition it was in. You ask if I didn't know that stuff was not "Coca-Cola" as soon as I saw it; it **[704]** was not that color when I got it. It was about the same color as "Coca-Cola," as near as I could tell. They would not fool anybody that way now. You ask if I didn't know that these bottles were not "Coca-Cola" as soon as I looked at the bottles; in one case they were wrapped up. Of course, I could not tell what they were when they were wrapped up, but as soon as I opened the bundle and saw the bottles I knew that they were not "Coca-Cola." The "Coca-Cola" bottle has not the trademark "Coca-Cola" blown on the shoulder in all instances, but in most instances it has. When the word "Coca-Cola," blown on the face of the bottle, is facing you so you can see it, it is all right, but when a man handles a bottle in this manner (indicating) you can't tell what is on the face of the bottle. You say that, of course, if he covers it one couldn't tell whether it is a bottle or not, but you say you mean if I looked at it; if he hands it

(Deposition of George H. Wilkins.)

across I would know it was not "Coca-Cola." You ask if I would know that as soon as I saw the crown; to the best of my knowledge it would not be "Coca-Cola" with a "Koke" crown. I don't think you could see that at a glance. You ask if it would require careful study and a minute determination to tell the difference between "Koke" written on this crown and the words "Coca-Cola" written on the "Coca-Cola" crown; the whole general effect, if the red script was there, according to the way lots of people would think, might represent itself to be "Coca-Cola" and not "Koke." If I was not examining it closely I would take it for "Coca-Cola" and I think the ignorant or unsuspecting would do the same thing. No, I do not mean to tell you that that looks anything like "Coca-Cola" to me now because I have handled too many of them. I don't believe it did look to me like "Coca-Cola" the first time I saw it, because I was looking for "Koke." I knew a "Koke" label and "Koke" crown. You ask if I don't know that the bottle marked Plaintiff's Exhibit #187 is about the same size and shape bottle that is used generally in the trade in the soft drink business for nearly every kind of carbonated soft drink that is on the market; well, no, I could not testify as to that. I don't know what bottles they have used. Until I work on a case I do not pay much attention to the exact type and size of bottle, but I know these bottles, "Coca-Cola" and "Koke," are about the same as a **[705]** great many bottles I have seen that do not contain "Coca-Cola" and

(Deposition of George H. Wilkins.)

"Koke." I do not know what they do contain, of course. You ask if I have ever seen any of the "Coca-Cola" bottles used for a drink known as "Grapine" or "Iron Brew," strawberry soda and lemon soda; I have seen "Iron Brew" in Appollinaris bottles. They are called a "split." I suppose bottles of the type of Exhibit #187 would be termed "split," too. I don't believe I have seen "Iron Brew" in "Coca-Cola" bottles with "Coca-Cola" blown in the glass, but I have seen "Iron Brew" bottles. Most of the soft drinks I got at Ft. Worth, Dallas and New Orleans were in this general style of bottle, but I do not know them as being "Coca-Cola" bottles. It is a bottle similar to this bottle, Exhibit #187. No, I do not believe I could tell from the shape of the bottle what was in it. Yes, sir, I have drunk quite a little bit of "Coca-Cola," almost daily for several years. I have drunk it in Atlanta, Augusta, Savannah and Jacksonville. I have traveled through the South quite a bit. For months at a time I would be in one spot. When I went to St. Louis to see Mr. Van Deusen I introduced myself under the name of Mr. Walton. I could not do anything else when the letter said "Walton." That was the only thing I had to introduce me and then I further misrepresented that I was interested in buying stock in this company. I don't know whether I gained the confidence of Mr. Van Deusen by this fraudulent means or not. I know that I got what I asked for and found out some things. Yes, sir; I misrepresented myself in order to get confidential in-

(Deposition of George H. Wilkins.)

formation from him. The attorney for the Coca-Cola Company told me to get this information, but none of the misrepresentation was at his instance. They told me to get it. They did not care how I got it, I suppose. I don't know whether or not they knew that we was slick enough to get it by hook or crook. You say they would not have employed me if I had not been; I am not successful in every case, you know. Yes, I know a young man named Mansfield, I was instrumental at this time to get him to testify here, but I am not the one who found out what he knew. I called him up but I got his name from some Pinkerton reports. I never saw him until a few weeks ago. No, I do not know how many other products under the name of "Koke" are on the market now. **[706]**. I only know of one. I do not know how many such products were on the market in 1913 during the time I speak of. I only know of one—that is all I knew. In none of these cases in Ft. Worth or Handley do I know who bottled the goods or what was in the bottle or anything about it, except that people asked for "Coca-Cola" and that was served to them. I think I could tell who bottled the goods by the tickets, or the bottles, if I examined them, which I did in one place. At the concession at Handley, after I got the bottle wrapped up in the newspaper, I went to the back of the concession where they threw the empty bottles and there were about 12 or 14 cases of "Koke" with the bottler's name on the box, which was in one instance the Jersey Cream Company, Ft. Worth, and, in another,

(Deposition of George H. Wilkins.)

McDaniels Bros. I do not know, of course, whether or not this local dealer had just put these bottles into a box which formerly contained Jersey Cream. Mr. Van Winkle told me the Jersey Cream people bought so many gallons or barrels of "Koke" during the past thirty days. I don't remember how much. He also told me his principal customer in Ft. Worth was McDaniels, bottlers. I also got this information from the card index files of the Koke Company of Texas. The card I looked at specially, was McDaniels Bros. I took it out of the pile and asked Van Winkle what the number meant and he said it was the gallons bought on those dates. There was a date and then a number following.

Yes, sir, I have also been engaged in getting up other witnesses for the Coca-Cola Company, and I am assisting them in every way possible in the preparation of this case—that is, assisting Reed and Rogers, who are the attorneys for the Coca-Cola Co. No, I would not think that when a man gets to work on a case he naturally gets sort of partisan, but he does get enthusiastic. I do not think any more of the Coca-Cola Company than I did last week or the week before, not a bit more. I don't think any less of "Koke" than I ever did. Yes, sir; I have been in this for quite a little bit over a year. That does not change my opinion any. It does not make me partisan. I ask persons what they know to be true. If they know nothing, I am not interested in them. If they know something that will help the case, naturally I want to get everything that they

(Deposition of George H. Wilkins.)

know. [707] "XQ. 319. And if they know something that will hurt the case you forget that?" "A. Sure, why shouldn't I?"

Redirect Examination by Mr. ROGERS.

When I went on this expedition, I was not given specific instructions by any one in the office of Reed and Rogers, I was just told to investigate. I was not given any specific instructions as to how that investigation was to be made, I was absolutely a free lance. No, sir, in the course of my investigations I did not in any instance find anything that would in my opinion hurt the "Coca-Cola" side of this case. Yes, sir; if I had I would have reported it to my employers. I report everything I find, both ways. Yes, sir; I have seen genuine "Coca-Cola" barrels and have been in the plant there and in Dallas and in Ft. Worth and in Atlanta. As near as I can tell, the barrels that I saw in the plant of the Southern Koke Company, Ltd., at New Orleans, and of the Koke Company of Texas, at Dallas, were precisely the same color as "Coca-Cola" barrels. Yes, sir; the light was good so that I could see the color. In one case it was quite bright sunlight. In the other case the sunlight was not so bright; it was sort of diffused. The barrels were stacked up against the wall in such a way that the color could be seen only in the Dallas case. I could not see the bottom barrels, but I could see the ones where the partition ended and the glass began, and they were all the same color, this red color, and then, when I was taken out to the mixing tank, I could see the other head of the barrels.

(Deposition of George H. Wilkins.)

Even the mixing tank was painted the same red. There was a negro near this tank painting a small keg. There was a barrel partly painted and he wanted me to keep away from it. The paint was a red paint, the same as on the barrel. I spoke a few moments ago about some cards which I saw at the plant of the Koke Company of Tekla, at Dallas. Those are the cards that I testified a few moments ago were the cards containing the names of the customers of the Koke Company, and shown to me by Mr. Van Winkle. When he showed me these cards he said, "Here are the list of customers we have." [708]

Recross-examination by Mr. LITTLETON.

Yes, sir; I noticed quite a number of customers in Dallas on this list, but I do not believe I noticed any bottle customers. There were a number of customers' names and I could not tell whether they were bottle customers or not. I copied just a few names to verify. There were no dates on some of the cards. There would be probably a figure like 24, which would mean 24 gallons at some time. Some of those names I remember I looked up and they had neither "Koke" nor "Coca-Cola." You ask if I know whether or not the "Coca-Cola" Company buys second-hand barrels from cooperage people; yes, sir, I know a little about that. I probably don't know enough to qualify as an expert, but in conversation with Mr. James and Mr. Frank Killilen at New Orleans, he said that the Coca-Cola people would not take "Coca-Cola" barrels from him and he had to

(Deposition of George H. Wilkins.)

find a market for them so he sold them to vinegar people and oil people. He did not state why the Coca-Cola people would not take the "Coca-Cola" barrels. He dealt in barrels. (Mr. HIRSCH.—"It is admitted in this record that the Coca-Cola Company buys second-hand barrels. Mr. C. H. Candler testified that they did buy second-hand barrels, as I remember.")

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #168 to #192, inclusive.)

Deposition of Phillip Jansen, for Plaintiff.

PHILLIP JANSEN.

Direct Examination by Mr. ROGERS.

I live in Chicago and have no occupation at present. I graduated from Ann Arbor, this town. I had an occasion last summer to make an investigation on instructions from the office of Reed and Rogers. I was instructed to visit soda-fountains and places selling soft drinks and to ask for "Coca-Cola" under the name of "coke," find out what different salesmen understood me to mean when I used the word "coke." This investigation was carried on in the city of Chicago on West Madison Street, North Clark Street and Cottage Grove Ave. On West Madison Street I started at the Lake and finished at Ogden Avenue, covering a distance of about two miles. I called at all the soft drink places in that district. On Cottage Grove Avenue I started [709] at 22d Street and went to Washington Park, a distance of about a mile and a half. On North

(Deposition of Phillip Jansen.)

Clark Street I started at Madison and went as far as Center Street, a distance of about two miles. I called at all the soft drink places on various streets mentioned within the boundaries mentioned. When I went in I would usually ask for a glass of "coke," sometimes "Coca-Cola." When I asked for "coke" I would watch and see where the syrup was drawn from in each case. In each instance it was drawn from the pump in the fountain or the pumps underneath the counter. I did not observe the labels or marks on the pumps in all cases, but in some I did. The fountains which were marked, and which I observed, were marked "Coca-Cola."

(By agreement of counsel, examination of this witness was interrupted in order to take the testimony of the next witness.)

Deposition of Edward T. Langan, for Plaintiff.

EDWARD T. LANGAN.

Direct Examination by Mr. ROGERS.

I am the owner of a lunch-room, tea-room, 55 E. Congress St., Chicago. Formerly I was a drug clerk for A. W. Adamick, at Chicago Avenue and Clark Sts. From the 15th of last May to the 15th of this May, I was manager of the soda-fountain and lunch at the Auditorium Pharmacy. For the last twelve years, I should say, I have sold "Coca-Cola," and I have been about the fountain so that I could hear people ask for drinks and know the names they use. When people order "Coca-Cola" they use various names to indicate their desire. Take it as a

(Deposition of Edward T. Langan.)

rule, a stranger coming in that you do not know will ask for "Coca-Cola," but a regular customer coming in, they get in the habit of talking to you and kidding you and they ask for, oh, lots of things, like "dope," "shot in the arm" and "coke." When a man asks at any of the fountains with which I have been connected for "coke" I understand that he means "Coca-Cola." I could not say that I have ever made any inquiries of people asking for "coke" as to what they mean because I always repeat "Coca-Cola"? and they always say, "yes," and when a man asks for "dope" or "shot" or anything like that, I turn around and ask them every time whether they mean "Coca-Cola" and they say, "yes." Ever since I have been in the business, about twelve years, a few would come in and ask for "coke." [710] I recall having an interview with a young man, Mr. Mayfield, who tried to sell me a product under the name of "Koke" a short time after I went to the Auditorium Pharmacy. He was in there, I judge, about five or six times during the Spring of 1913. I don't know exactly the words that Mr. Mayfield used, only he wanted to sell me "Koke," or some substitute. He claimed that it was made the same as "Coca-Cola" and it could be sold the same as "Coca-Cola" without anybody ever detecting the difference. You ask me to explain my last answer a little bit, and you ask if I mean that Mr. Mayfield told me that it could be sold for "Coca-Cola" when people asked for "Coca-Cola"; no, he said that the men who used to make "Coca-Cola" was now making this product,

(Deposition of Edward T. Langan.)

and, therefore, it was the same thing and it could be sold as "Coca-Cola." I did not purchase any of this product from him.

Cross-examination by Mr. LITTLETON.

I am 27 years old. I started in and was apprenticed a drug clerk and ran a soda-fountain, but of late years I have done nothing but take charge of soda-fountains and lunch. Yes, sir; I have dispensed some of the other cola drinks. I have dispensed lime juice and "Cola" and "Cola Mint," but that was not similar to "Coca-Cola." There is quite a difference. The name might sound similar, but it is made with mint in it. You can detect the flavor very readily. That has been on the fountain right along for the last ten years. Yes, it is the same color as "Coca-Cola." I have handled it and know that it has been on the market for the last ten years. It is made by Park Davis & Company, of Detroit. The drink I am referring to is "Lime Juice and Cola." I don't know who makes "Cola Mint." Neither the "Lime Juice and Cola" nor the "Cola Mint" tastes like "Coca-Cola." I have tasted both. The "Mint Cola" has only been on the market a couple of years. It is gone, now; we do not use it any more at all. I should judge it was on the market about four years ago. I have handled at the fountains and places where I have dispensed drinks both root beer and sarsaparilla. I should say that root beer is much darker than "Coca-Cola" whereas sarsaparilla is lighter. However, they are the same

(Deposition of Edward T. Langan.)

general color as "Coca-Cola," and it would be [711] hard to distinguish between them and "Coca-Cola" unless you had them side by side. They are all dark. There are so many other drinks which I have dispensed at my fountain of that dark color that I really could not begin to tell you how many of them I have dispensed. Almost all of the drinks are dark, say like ginger syrup, several different places make it dark. Vanilla syrup and coffee syrup is made dark. That is the general color for drinks at soda-fountains—just about—dark and red and brown. I have never handled or dispensed either "Afri-Cola," "Ko-Nut," "Cola-Nip"-"My-Coca," "Mar-Cola," or "Kola" or "Lemon-Cola." The "Lime Juice and Cola" and the "Mint Cola" are the only drinks of that class I have dispensed. I should not have said "Mint Cola." I said that more on account of the name. "Mint Cola" is a green drink and could never be mixed with cola in any way. No, I am not acquainted with the "Mint-Cola," that is the same color and taste as "Coca-Cola," and this "Lime-Juice and Cola" that I refer to is not the drink known on the market as "Lime-Cola." The latter is a different drink. So that I have not dispensed any of this great number of cola drinks that are on the market. I couldn't remember the names now by which these drinks are called for by the public in asking for them, but I have had people ask for one or two cola drinks, but we do not have them. Yes, sir; they also use the expression around Chicago, "dope," meaning "Coca-Cola."

(Deposition of Edward T. Langan.)

"Dope" means a drug, and when you speak of "dope" or a "dope fiend," that means a drug fiend, so that if they come in and ask for "dope" I wouldn't know what to give them unless they explained what they wanted. The word "dope" is a word that is used in a great many ways; a person will ask for the "dope on a base-ball game" and for the "dope on horse races," and newspaper people call news, dope, —"go out and get the dope of what transpired." In addition to "coke" and "dope" I have heard customers using such expressions as "shot in the arm," "eye opener," and, oh, various names; I could not remember them all. I do not know whether "shot in the arm" indicates an injection of cocaine or some drug. I have never seen anybody take it that way. All I know is that they came in and asked for "a shot in the arm" and kind of smile, and I say "Coca-Cola?" and they say, "yes." [712] Yes, I do know that cocaine, or morphine, is taken that way,—by an injection in the arm. That form of expression is equivalent to asking for some drug, and the same way with "dope." When they come in there and say "give me a dope," that is practically asking for a drug, a drug drink. You ask if I have heard or seen people who thought "Coca-Cola" had cocaine in it; they have never expressed their opinion to me. I have heard it discussed. I have heard people ask me if I thought there was cocaine in it;—more in a joke than any other way, though. They would be joking about it more to have something to say when they come in in the morning than anything else.

(Deposition of Edward T. Langan.)

They got off that joke sometimes about root beer—ask if there is any "dope" in this, or "dope" in that. I don't know what they meant by "dope" when they said "dope" in such instances. I didn't go into details and ask them what they meant. Yes, sir; I told them that there was not any "dope" in those drinks. You ask what I understood them to mean when I told them there was not any "dope" in there; that could mean various things. They would say "is there was any dope in it," I would say, "No." You say that when I said "no," I understood that they meant something and you ask what I understood that they meant; I couldn't say. You ask if I told them no when I didn't know what they meant; just as I say, they were more kidding than anything else. I don't know what they meant. You ask if I didn't have an idea as to what they meant when I answered them and told them "No," and if I was telling them it did not have a thing in it when I didn't know what they were talking about; possibly I did. I don't know what they make these drinks out of. You again ask me what I thought these people meant when they asked me if these drinks had "dope" in them, and what they meant by "dope"; it might be caffeine, the same as coffee. Possibly they could very well apply it to a drink made up of caffeine, or some dope like that, and, used in that sense, it means a cocaine or caffeine drink.

Redirect Examination by Mr. ROGERS.

Yes, sir; I said on direct examination that frequently when a man would come into my fountain

(Deposition of Edward T. Langan.)

and ask for "dope" I would say inquiringly, "Coca-Cola"? and I have never had anybody in response to [713] that inquiry say that "Coca-Cola" was not what he meant when he asked for "dope." No, sir; I have not any doubt from my experience what a person meant when he came to a soda-fountain and asked for a drink under the name of "dope." He meant "Coca-Cola."

Recross-examination by Mr. LITTLETON.

No other cola drink except "Coca-Cola" is sold up here to my knowledge, so that if a fellow wanted a dope drink and "Coca-Cola" was the only dope drink up here, naturally he would mean that, and, as I did not handle any other dope drink, I gave him the only dope I had—I repeated "Coca-Cola"? and he would say "Yes."

Deposition of L. Laurion, for Plaintiff.

L. LAURION.

Direct Examination by Mr. ROGERS.

I am in the real estate business at 22 Quincy St., Baltimore Bldg., Chicago, in which business I have been engaged for about six years. I recall an incident happening a year or so ago, in which I answered an advertisement in one of the newspapers and was called upon by a man, trying to interest me in the sale of a product under the name of "Koke." The way it came up, they had an advertisment in the paper and we answered it. They came back with a letter and wanted to know if we would interest ourselves in this proposition, which was manufacturing

(Deposition of L. Laurion.)

a drink similar to, or just like, the "Coca-Cola" at a large profit, etc., and went into the details as to the profit and as to those things. You ask if anything was said at that interview about the sale of this product "Koke" for "Coca-Cola" or as "Coca-Cola"; well, the inducement offered was, I think, that, seeing that "Coca-Cola" sold so well that just the same thing or may be better, that it would make a lot of money and could be sold for the same purpose. I couldn't say that they said they would sell it for "Coca-Cola" or under the name "Coca-Cola." I don't suppose they did sell it that way. No, sir, nothing was said about advertising the goods one way or the other.

(There was no cross-examination of this witness.)

Deposition of Charles E. Caspari, for Plaintiff.

CHARLES E. CASPARI.

Direct Examination by Mr. HIRSCH.

I am a chemist and reside in St. Louis, Missouri. [714] I received my professional education at Johns Hopkins University, Baltimore, Md. I taught chemistry for one year at Columbia University in New York City and for the last eleven years at the St. Louis College of Pharmacy in St. Louis. I have had quite an extensive experience in examining soft drinks during the past fourteen years. I have known "Coca-Cola" for about twenty years, and have examined it analytically on a number of occasions. I should say I have analyzed between 150 and 200 samples of "Coca-Cola." I have

(Deposition of Charles E. Caspari.)

had experience also examining products that are similar in appearance to "Coca-Cola" and have analyzed 300 samples of such products. When "Coca-Cola" is presented to me for identification the color is the first property which is examined. The first thing I do is to look at the color. The color of "Coca-Cola" is produced by caramel, which is commonly known as burnt sugar, obtained by heating sugar to a certain degree of temperature when the change known as caramelization takes place, converting the sugar into caramel. The caramel in "Coca-Cola" merely colors it. It has no other function whatever. Yes, sir, caramel is a cheap product. Yes, sir; there are other products on the market that these soft drinks could be colored with besides caramel; there is a number of dyes, both vegetable and synthetic, which might be used to color them in place of caramel. In my examination of "Coca-Cola" I have never found any cocaine in it, nor have I ever found any narcotic in it, but I have found a stimulant in it, which is caffeine. I saw Merchandise #5 manufactured at the Shaffer Alkaloid Works in Maywood, New Jersey, about three or four years ago. I went through the entire process from start to finish and watched everything in detail, even sealing the apparatus over night while I was away. I saw coca leaves and cola nuts there. The coca leaves were powdered very finely and then decocanized—that is, the cocaine was removed from them. I saw coca leaves and cola nuts used in the manufacture of Merchandise No. 5. 380 pounds of

(Deposition of Charles E. Caspari.)

coca leaves and 125 pounds of cola nuts to a batch were used in manufacturing Merchandise No. 5. The cocaine was taken out of the coca leaves before they were used in the manufacture of Merchandise No. 5. I have been in the plant of the Coca-Cola Company in Atlanta and have seen Merchandise No. 5 used there and have seen **[715]** it go into the syrup in the course of manufacture. Along in April, 1910, I received some samples from C. H. Candler. I tested them to see what they were and there was a difference between them in the flavor and in the odor. I would say that a little less than two per cent of Merchandise No. 5 is used in "Coca-Cola." It undoubtedly gives an odor and flavor to "Coca-Cola." I received three different samples of a product marked "Koke." One of them was received a number of years ago. I cannot say just exactly when, from Mr. Van Deusen; the second was received last summer on the 31st of July, 1913, and the third was received this summer about July 20th. I analyzed these samples chemically. When I received the sample from Mr. Van Deusen I had a conversation with him in regard to it. Mr. Van Deusen brought me this sample for the purpose of determining whether or not it contained any cocaine, and, at the time, told me that he wanted an assurance that it did not contain any cocaine, because, as he explained it, if it did not contain cocaine that would make it a very much more salable product. I examined it as carefully as I could and I found a trace of something which reacted as an alkaloid, but which

was not present in sufficient quantity for me to identify as any individual substance—it was merely the slightest trace. I told Mr. Van Deusen that and he said, "Well, is it cocaine"? I said, "I don't know, it came down where cocaine would be expected to come down, but whether it was cocaine or not I couldn't for the life of me tell." "Well," he said, "it can't possibly be cocaine because I do not use anything from coca in the manufacture of this." I admitted that it probably could not be cocaine. He said something to me at that time about the use of celery in connection with the sale of this drink known as "Celery Cola." I analyzed the "Koke" sample as to specific gravity, which I found to be 1.283 at eighty-eight degrees Fahrenheit. I found the sugar content to be 58.35 per cent. The caffeine content was .18 per cent. The phosphoric acid content was .30 per cent. I also made an analytical examination of the product sent me by the Southern Koke Company and found its specific gravity at 88 degrees Fahrenheit to be 1.262. The sugar content 54.2 per cent; the caffeine content .14 per cent and the phosphoric acid content .32 per cent. **[716]** The last sample which I got recently was obtained through the J. S. Merrill Drug Company of St. Louis. They wrote to New Orleans for it first and it was not supplied from there. They were told that it would be supplied by the St. Louis representative of the Southern Koke Company, which was the Western Koke Co. I analyzed that sample and obtained the following results:—Specific gravity 1.267 at 81 degrees

(Deposition of Charles E. Caspari.)

Fahrenheit; sugar 55.21 per cent; caffeine .16 per cent, phosphoric acid .30 per cent. I examined these samples to see whether or not they responded to my test for Merchandise No. 5, but they did not respond the same as my test in examining "Coca-Cola."

Coca leaves contain, in addition to the cocaine and allied alkaloids, a fat, a volatile oil, a resin, a wax, chlorophyll, tannin, cellulose, a substance known as hygrine, and minute quantities of calcium oxilate. The cola nut consists of caffeine, kolanin, tannin, starch, gum, resin, protein matter, cellulose and wax and theobromine. Cocaine does not in the least add anything to the flavor of a product, nor does caffeine. Plaintiff's Exhibit #193 is a bottle containing specimens of coca leaves and Plaintiff's Exhibit #194 is a bottle containing cola-nuts. These specimens show the whole coca-leaf and the whole cola-nut. They are some of the products which were used in making up Merchandise No. 5 and I saw them handed to you at the Shaffer Alkaloidal Works at the time I was there. Coca leaves and cola-nuts are not popularly known, and have never been. This product, which I said I saw the coca leaves and cola-nuts go into, is an element in the manufacture of "Coca-Cola," it goes into it.

Cross-examination by Mr. LITTLETON.

Yes, sir; I saw the process by which Merchandise No. 5 was made. That process is as follows: The coca leaf is first powdered very finely, and then mixed with about an equal bulk of sawdust, and to

(Deposition of Charles E. Caspari.)

that is added a sufficient quantity of a dilute solution of sodium bicarbonate, for the purpose of rendering the leaf alkaline in order to free the alkaloid. Then it is packed in a percolator and is extracted with toluene. After this extraction is complete and all of the alkaloid is removed—it being understood that the toluene, as it percolates through the leaf, drips and is collected—live [717] steam is blown up through the leaf, which has been exhausted of the alkaloids, to remove every trace of the solvent toluene. The leaves then are still in powdered condition mixed with sawdust and are changed from the original leaf only in having the cocaine removed. That is the de-cocainizing process. The toluene I speak of is not an oil; it is what is known as a hydrocarbon. Coal oil is a mixture of several different kinds of hydrocarbons, whereas toluene is an individual hydrocarbon. There is no toluene in coal oil. They come from different sources. Coal oil comes from petroleum and toluene comes from coal tar. The object of putting sawdust with the coca leaf is to make the extraction more easy. A large majority of drugs are mixed with some inert material. When they are extracted for the purpose of obtaining the active principle, whatever it may be, in order to make the percolation easier sawdust may be used, or exhausted bark or roots, what is commonly called marc, and some other drug is used as a dilutent; sand is sometimes used, to keep the mass from packing too closely. It is a mechanical reason, not a chemical reason. This makes the percolation easier

(Deposition of Charles E. Caspari.)

by separating the small particles of the leaf into which the leaf has been ground or powdered and keeping them from packing in that way. After the cocaine and the associated alkaloids are thus extracted from the leaf, some of the toluene remains in the leaf. Live steam, I don't know at what pressure, is then driven through the leaves for the purpose of removing the toluene that remains in them, and which is volatile, with water vapor. I could not tell you exactly about how long the steaming process is carried on, but it is carried on until the toluene is removed, whether it takes ten minutes or four hours. Aside from the alkaloids in the coca leaf, some of these other properties I speak of are largely volatile and some of them are not. By volatile I mean that in its broadest sense, not in the sense that if you put it on a table it would volatilize like ether or alcohol. It would not do that. The tannin and the chlorophyll are volatile, some of the oil would be volatile. Some of the oil in coca leaves is an essential oil, and by essential oil I mean one that can be volatilized without decomposition. Some of that would go off, and, perhaps, the least bit of resin. That is all I think could be volatilized. **[718]** No, wax is not volatile, and you did not understand me to say a minute ago that Chlorophyll and tannin are volatile, because they are not. There is nothing else that is volatile in the coca leaf except the substances above mentioned; namely, some of the oil in the coca leaf and perhaps the least bit of resin. The other substances in the coca leaf are not vola-

(Deposition of Charles E. Caspari.)
tile. I cannot tell you the quantities in which these substances, aside from the alkaloids, are present in the coca leaf because I don't know. I have never made any quantitative analysis of them and I do not think it has ever been done by anybody. I testified in the case brought by the Government against the Coca-Cola Company in the Federal Court at Chattanooga that I did not know how to determine quantitatively the amount of tannin in the coca leaf and I don't believe anybody else does. No, I do not think that almost all of the properties of the tea leaf would be driven off if tea leaves were steamed with sixty pounds pressure of steam for four hours. Under that pressure I guess the caffeine would be driven off and probably the volatile oil, but I would venture to say that if you would dry the residue that is left it would form at least ninety-five per cent of what you had to start with. If tea were mixed with sodium bicarbonate and then treated with a hydrocarbon such as toluene, coal oil, or benzine, the chief thing that would be extracted from the tea would be caffeine, and there might, also, be a trace of chlorophyll removed. This chlorophyll is a substance which is common to practically all green vegetation. It has a characteristic property—that is, you can identify it when you get it. You can identify it by several different reactions. For example, the mere fact that it shows different colors by reflected light, and by transmitted light, is characteristic of it. Look at chlorophyll by reflected light, it is a sort of plum color. Look at it by transmitted light, it

(Deposition of Charles E. Caspari.)

is a green. I do not suppose chlorophyll has any physiological properties, but it has chemical properties. I am not prepared to say that chlorophyll has no taste. I have never tasted it, and I do not know. Yes, sir; it is an inert substance, no question about that. If the steam in this process is at the pressure that you mention, sixty pounds, I suppose the wax would soften up considerably, but I don't think any of it would be driven out. [719] Wax is not volatile with steam like toluene is. Cellulose is not an inert substance, but it has neither taste nor smell nor has it any stimulating qualities. I am quite sure, however, that it has a food value, which is the food value of any carbo-hydrate. I do not know the amount of cellulose in the coca leaf. I should say it was pretty great. You ask how I can say whether it is great or small if I don't know the amount; oh, very easily. You can tell whether a man is fat or thin, can't you, without telling what he weighs? By the same principle you can tell whether a thing predominates or not, even though you cannot tell just how much is there. Of all these substances left in the leaf after the alkaloid has been extracted, I should say the cellulo*id* and protein predominate. I include the protein with the cellulose because the two are so intimately related in the leaf that you cannot well consider one without the other. No, I would not say that the tannin is present in the coca leaf in an infinitesimal quantity. What would you consider an infinitesimal quantity? A tenth of a per cent? You say you mean compared with the total substance of the leaf; well, now, the

(Deposition of Charles E. Caspari.)

cocaine itself is the most valuable thing in the coca leaf, and that is only there to the extent of one-half of one per cent. That might seem infinitesimal, but that is the most important thing there, so far as the commercial value of the coca leaf is concerned. The tannin comes somewhere, I should say, between zero and one per cent. The balance of the substance left in the coca leaf, after the alkaloids have been extracted, have the characteristic taste of coca leaf, with one exception, perhaps. It might not be quite as bitter after the extraction as it was before. The combination of ingredients in the leaf other than the alkaloids is what gives it that characteristic taste. No one ingredient alone imparts that taste. No, all of the ingredients left in the leaf do not have a taste. I have said that cellulose has no taste. It is just some of those ingredients that give the leaf its taste. I should say all of the ingredients do so except the cellulose. I said I do not know whether or not chlorophyll has a taste because I have never tasted it, and therefore do not know whether that imparts a taste or not. Then there is certainly one, and maybe two, ingredients that do not impart a taste. [720] The wax imparts the taste of coca wax. I could not identify a taste by a description. You might ask me what beeswax tastes like. I could not tell you, and yet, if you would give me a piece to chew, I could tell you it was beeswax. I should say that this wax also imparts an aroma because all waxes do. The other things which give taste and aroma are the tannin and the oil. You ask if this combined

(Deposition of Charles E. Caspari.)

taste is a strong or a weak one; there, again, you will have to qualify that more. I don't know what you mean by a strong taste or a weak taste It is quite pronounced. If you use this Merchandise No 5, it is quite a pronounced taste.

Now, after having extracted the alkaloid and having steamed the coca leaf, the balance of the process of making Merchandise No. 5 is as follows: The coca leaf is then mixed—understand, now, that we have 380 pounds of it to start with—with 125 pounds of cola nuts, and they are exhausted with an alcohol of about eighteen to twenty per cent in strength. This is then racked off and pasteurized and is then the finished product. That makes about nine hundred gallons of finished product,—the 380 pounds of coca leaf and 125 pounds of cola-nut, when treated in this manner make about 900 gallons of Merchandise No. 5. In making these percolations about 900 gallons of 18 to 20 per cent alcohol are used. I have seen them put this Merchandise No. 5 in "Coca-Cola." In making soda-fountain syrup they use about 16 gallons of Merchandise No. 5 to make 1250 gallons of the syrup. It is about 16 gallons—I thought it was 18. In making the bottlers' syrup they use about 13 gallons of Merchandise No. 5 to make 1250 gallons of the syrup, as near as I can remember. I know it amounts to a little bit less than two per cent. In the extreme diluted form in which bicarbonate of soda is used in this process I do not believe it would have any effect at all upon any of the ingredients of the coca leaf aside from

the alkaloids. No, the oils which I referred to remaining in the coca leaf would not necessarily be extracted by the toluene in the percolation process. That is paramount to saying that all oils would be soluble. Some oils undoubtedly would, and some would not. The oils in the coca leaf, I believe, would not be; at least, not entirely. Some of them might be extracted, but I cannot say that they are. [721] I have never made a demonstration to prove that they are not, but I know that the extract which is made from the de-cocainized leaves after the treatment with toluene has a distinct flavor and odor of its own. You ask if the action of the toluene as a whole on the leaf would have a modifying effect on the other ingredients of the leaf, leaving out of consideration the alkaloids; I can only answer that by saying, no. It would not have any effect at all. It does not have any effect on the alkaloid there. It dissolves it, but that is not an effect on the alkaloid in the way I understood you to mean it—affecting it in some chemical way. It affects it to the extent that it removes the dissolved alkaloids. I do not believe it would affect in any way the other ingredients of the leaf. I have made a number of determinations of Merchandise No. 5 and in each instance it had the same amount exactly of caffeine. The only other ingredient which I determined quantitatively in Merchandise No. 5 was the alcohol, and that varied from 15.76 per cent to 16.2 per cent. But you will remember that sixteen gallons of Merchandise No. 5 are used in 1250 gallons of "Coca-Cola" syrup,

(Deposition of Charles E. Caspari.)

so that there is less than two per cent of Merchandise No. 5 in the syrup. The variation of two or three-tenths of a per cent of alcohol in Merchandise No. 5 could not by any known means be detected in the syrup. The last time I analyzed Merchandise No. 5 was a few months before the trial above referred to at Chattanooga. I stated that in my analysis I determined that there was chlorophyll and tannin in Merchandise No. 5, but I did not determine the quantity. All I determined quantitatively was the alcohol and caffeine. I did not determine anything else quantitatively. I don't know whether as a matter of fact you can determine quantitatively anything else besides those four substances, tannin, chlorophyll, alcohol and caffeine in Merchandise No. 5. I have never tried to. I do not know whether the presence of the other substances could be detected or not. I have never tried it. I dare say with enough material available and enough time at one's disposal, it could be done. **[722]** If a strong concentrated flavoring extract taken from the peel of oranges, lemons, limes and eight or nine strong flavoring oils like that, were put into 1250 gallons of syrup similar to the "Coca-Cola" syrup in the quantity of about twenty-seven and three-fourths gallons, being in a solution of alcohol to preserve it, such extract would tend to flavor the syrup and would add an aroma thereto. You would know it was there, certainly, and if vanilla were added to it, that would tend to give it a flavor also. If this strong flavoring extract were put into this syrup in the quantity

stated, namely, about twenty-seven and three-fourths gallons to the twelve hundred and fifty gallons of syrup—about two and one-half per cent—that would be a larger *thantity,* of course, of flavoring than the Merchandise No. 5, but it would not necessarily be more pronounced. If you put in your twenty-seven and three-quarters gallons of flavoring which you have indicated, consisting of orange peel, lemon peel, limes and essential oils dissolved in alcohol, you could not pick out in the first place, in that flavor by itself any predominating flavor; it would be a blend; and, if you added vanilla to it, again you would change the blend;—change the flavor,—but you would still have only a blend. Now, when you mix all that flavor which you have blended with the flavor which was derived from Merchandise No. 5, you again have a blend, and you have not the flavor of No. 5, nor have you the flavor of vanilla, nor have you the flavor of orange, nor have you the flavor of any one of the single ingredients which you have added; but you have got a composite flavor which is made up of all of them. That is perfectly analogous to extract of vanilla, which contains, as its chief ingredient, vanillin, and yet, if you make a solution of vanillin in alcohol or water, it is not identical with the odor of extract of vanillin, because one is a single substance and the other is a blend. That is what you have in "Coca-Cola." You have a blend of various ingredients and no single one predominates. If eight gallons of the flavoring extract were put into the syrup in the pro-

(Deposition of Charles E. Caspari.)

portion of nine parts of alcohol to one of extract, and were put into twelve hundred fifty gallons of syrup, that would also tend to flavor it, but the flavor would not be the same as it was before. [723] It would be a different flavor. You ask the direct question whether or not the presence of Merchandise No. 5, in the quantity stated, in 1250 gallons of "Coca-Cola" syrup, adds any appreciable flavor to the drink whatsoever; it certainly does, and the evidence of that is this: That two bottles were sent me, one of which contained "Coca-Cola" syrup made with No. 5, and one without No. 5, and I was asked to see whether I could distinguish any difference between them in the taste and odor, and there was a very marked difference, a pronounced difference. Anybody could tell the difference right off. So that a drink that was made without Merchandise No. 5 could not possibly be taken for a drink that was made with Merchandise No. 5, if you drink the syrup alone. If the two drinks were made pretty much the same way, along the same line, only one had in it Merchandise No. 5 and the other did not, there would be no difficulty in distinguishing between the two in the form of syrup. If you added carbonated water as you do to make a drink of "Coca-Cola," I could not say that you could tell the difference, because I have never tried it. I tried the syrup without being diluted in water. While the water would not add any flavor to the syrup, it would dilute it. If you added the same quantity of water to the "Coca-Cola" syrup as you did to this other syrup

(Deposition of Charles E. Caspari.)

made without No. 5, they would both be diluted to the same extent, but the question is whether or not by such dilution the difference would not disappear. I do not know as a matter of fact whether or not the difference would disappear. That is not a chemical question that can be answered without trying it. The addition of that much water will modify any syrup, I don't care what it is. It will simply weaken the flavor, and it is possible, by going far enough, to conceive that the dilution would annihilate a flavor. I can conceive of flavors being so highly diluted that you could not recognize some of them, although you knew some of the flavor was in there. You can pitch the strongest flavor in the Atlantic Ocean and it will be annihilated, and I have drunk tea that was annihilated. No, that was not tea that had been steamed four hours, I think it was too much water. No, the addition of seven ounces of carbonated water to one ounce of "Coca-Cola" syrup would not destroy the flavor. I am unprepared to say whether it would destroy [724] the flavor of a drink made in pretty much the same way as "Coca-Cola" syrup only without Merchandise No. 5, because I have never tried it. But I do know that there are a number of imitations of "Coca-Cola" on the market that can be readily detected on account of the flavor, even when they are drunk. You ask if it could be detected by a person who is not an expert; well, I don't know that you can talk about an expert in drinking "Coca-Cola." One who has drunk a great deal of it might tell the difference.

(Deposition of Charles E. Caspari.)

Take a person who has not drunk much "Coca-Cola" and does not know much about the flavor of it and a substitute could be much more easily palmed off on him than a man more familiar with "Coca-Cola." But if there was a marked difference in the flavor, of course, he would not be deceived. I have been doing work for the Coca-Cola Company, I should say, five years. (Mr. HIRSCH.—"It will be five years in November, exactly correct.") I have testified in one or two other cases as a witness in their behalf, and I analyzed the "Koke" syrup which I spoke of in this case at their request. You ask if I did so in order to qualify myself as a witness in this case; I do not know why I did it. I did it because I was asked to, that is the only reason I did it. No, I did not know that I was going to be called on to testify about it, that is, I did not know it positively. As far as I know the suit had not been brought when I made the analysis. I made the first analysis last summer, over a year ago. (Mr. HIRSCH.—"We will admit, on behalf of the Coca-Cola Company, that we asked him to analyze it because we were going to bring suit. I do not know whether Dr. Caspair knew it or not.") I reside in St. Louis, Mo., and came all the way to Chicago to testify in this case. The Coca-Cola Company has not yet paid my way up here, but I suppose they will. I came voluntarily and did not have to be urged to come, I always like to come to Chicago. I made the first examination of this "Koke" syrup I spoke of that I got from Mr. Van Duesen at Mr. Van

(Deposition of Charles E. Caspari.)

Duesen's request. That examination I cannot remember exactly, but I should say it was about four years ago. I cannot remember any more closely than that. It may have been five years ago. It may have been three years ago. I have no recollection of that date, no accurate recollection. The syrup I spoke of as having come from the Southern [725] Koke Company came to me with a label on it signed by the two men who brought it there. The label stated that they brought it there. (Mr. HIRSCH. "As far as we are concerned, Dr. Caspari did not get it direct from the Koke Company or its allied interests." There is nothing on the bottles containing samples of coca leaves and cola-nuts marked Plaintiff's Exhibits #193 and #194 respectively for me to identify them as the goods I got three or four years ago from the Schaffer Alkaloid Works except that I saw them handed to Mr. Hirsch at that time. There is nothing there to indicate to me that these are the same bottles except the appearance, shape and size. I know that the bottles were like that, but I do not know whether it was these identical bottles, or all the identical contents. He may have taken them out and put them in other bottles the same size, same shape, same color, and all.

In describing the process of manufacturing Merchandise No. 5, I testified that the coca leaf is treated with bicarbonate of soda in very dilute solution, the object being to free the alkaloid in the leaves so that it can be dissolved and taken out by the solvent. That alkali, the bicarbonate of soda, still remains in

(Deposition of Charles E. Caspari.)

the drug after it has been treated with the solvent. Then this drug is soaked for several days in a volume of six or seven or eight times its volume—I cannot answer that accurately because I do not know positively—of the solvent toluol; the toluol was probably approximately eight times in volume or weight of the amount of the drug used. This drug is treated for the extraction of the alkaloid by the process of maceration and percolation. Of course, the toluol that first comes off is much richer in the alkaloid and the last of it contains practically no alkaloid at all. As I stated before, it is possible that some of the other ingredients in the coca leaf might, to a certain extent, have been removed by the toluene, but there is certainly enough left there to give the extract which is made subsequently a clear flavor and an odor. I am familiar with the process of percolation by which alcohol is recovered from exhausted drugs. This process of recovering the toluene from coca leaves is in a broad way identical with the process for recovering alcohol from exhausted drugs; with [726] this exception; that in the case of alcohol you do not need, perhaps, as high a temperature to drive off the last trace of alcohol, but the process is generally the same. Steam at sixty pounds pressure will be two hundred fifty-seven degrees Fahrenheit. I cannot say accurately as to the time required by this process of distillation to remove all the toluene from the drug,—I should say a couple to several hours, which might mean from two to five, depending upon the quantity of the compound to be made up at that time chiefly,

(Deposition of Charles E. Caspari.)
and on whether the steam was exactly at sixty pounds pressure or a little less or a little more. No, I do not know it to be a fact that a current of steam at a temperature of two hundred and fifty-seven degrees passing for several hours through a vegetable substance would have a tendency to remove from it every*tying* of a volatile nature existing in the drug so treated. I do not believe that that is true in every instance. The only way to decide that will be to actually make a test of whether there is anything volatile left in there after that experiment has been made. You know that many substances which are volatile are very much more volatile or less volatile than others. No, it is not true that if a substance were treated by a current of hot steam at a temperature of two hundred and fifty degrees Fahrenheit for from two to five hours that all of the substance which is volatile would be carried away in every drug that could be so treated. I know of an instance where that would not be true. That is, the distillation of ajowain seed for thymol. That happens to be an instance where the substance is difficultly volatile and where it takes a very long time and a very high temperature to get it all out. That might be considered an exception to the general rule. Now, I would like to make a statement there to this effect: That admitting, merely, for the sake of argument—I do not admit it absolutely, but only for the sake of this statement—that everything volatile in the coca leaf was removed by this live steam that is passed through it, nevertheless the fact remains that the extraction of that product with

(Deposition of Charles E. Caspari.)

dilute alcohol after the steaming yields an extract which has a distinct color, flavor and odor, which must be due to something. Yes, sir; I find a relation between this color, taste and odor which is yet contained in the drug to the natural odor of [727] coca leaves; it reminds you of it. No, I won't admit that this process for de-cocainizing coca is a rugged, harsh process to which to subject a drug, expecting to obtain from that drug any of its natural properties after having been so treated, because the prime object of this treatment in the first place is to remove the cocaine and the alkaloids. They must be taken out absolutely so that not a trace is left. That requires the treatment as I have explained. That is the prime object of the process. Now, then, after the cocaine has been removed and the residue is harmless so far as its physiological effect is concerned, then an effort is made to remove from it the remaining odoriferous and flavoring principles that may be there, and that is done by extraction with the twenty per cent alcohol. No, if you were to take a sample of tea, treat it with an alkali as explained, soak it for several hours in toluene, drive off the toluene by several hours of distillation with a high pressure of steam of two hundred and fifty-seven degrees Fahrenheit, in which a very large amount of water is obtained in distillate, I do not think that the tea so treated could be made into a presentable article for drinking, because we drink tea primarily for the caffeine which it contains and that would be removed in this process which you describe. But not only

would the caffeine be removed, but its taste would be entirely modified, and yet I have seen large masses of tea leaves which have been exhausted by coal oil for the purpose of obtaining the caffeine from them, and have subsequently been steamed to get all of the caffeine out, and that mass of exhausted tea leaves still has distinctly the odor of tea leaves.

I am not employed by the Coca-Cola Company. By that I mean that I am not under any retaining fee by the Coca-Cola Company, nor do I draw a salary from them. I am paid for each piece of work I do separately. I have not yet been paid for the work done in preparing myself to testify in this case, but I am to be paid. You ask if I am what is termed a paid expert witness; I will answer that by saying, [728] first, that I do not know what the qualifications are for a paid expert witness. I am an expert witness, and am paid for my services as such, just as an expert lawyer is for his services.

Samples 193 and 194 are in the same condition now as when received from Schaeffer Alkaloidal Works.

Deposition of John A. Wesener, for Plaintiff.

JOHN A. WESENER.

Direct Examination by Mr. HIRSCH.

I reside in Chicago, Illinois, where I have resided since 1889. I am a consulting and analytical chemist and have been such since 1889. I received my technical education at the Michigan Agricultural College and at the University of Michigan. I graduated from the University of Michigan in the year

(Deposition of A. Wesener.)

1888, receiving the degree of analytical chemist. I received my degree in medicine from the medical department of the University of Illinois in the year 1894. I have taught chemistry at the Chicago College of Pharmacy, which is now the Pharmacy Department of the University of Illinois, and at the American Dental College, which is now the dental department of the Northwestern University, and I held the chair of chemistry in the medical department of the University of Illinois for twelve years.

I am familiar with the drink known as "Coca-Cola" and have known it for at least about twelve or fifteen years. I am the same Dr. Wesener who testified in the case of the United States Government versus Forty Barrels and Twenty Kegs of Coca-Cola. Yes, sir, I have analyzed the product known as "Coca-Cola." From looking at the drink, the way I would first determine whether a product was "Coca-Cola" or not, is by its general appearance and color. The color in "Coca-Cola" is produced with caramel. I think the only function which caramel performs in "Coca-Cola" is to give it its color. I would say I have made a great many analyses of soft drinks, probably over a hundred, possibly two hundred. I have seen "Coca-Cola" manufactured and I have seen what is known as Merchandise No. 5 manufactured at Maywood, New Jersey, by the Schaeffer Alkaloid Works. I have tested "Coca-Cola" several times for the presence of cocaine and have never found it to be there. But I have found caffeine in "Coca-Cola." I have made an investigation in regard to the effects

(Deposition of A. Wesener.)

of caffeine, or the effect of "Coca-Cola," in so far as to ascertain whether or not it is [729] deleterious, and "Coca-Cola" is not deleterious. When I saw Merchandise No. 5 manufactured by the Schaeffer Alkaloid Works, of Maywood, New Jersey, there were coca leaves used in its manufacture. The cocaine was taken out by a special process, devised, as I understand, by the late Dr. Schaeffer, and cola nuts were also used in the manufacture of No. 5. I have been to the factory of the Coca-Cola Company of Atlanta and have seen "Coca-Cola" manufactured there, and I have seen this compound described as Merchandise No. 5 go in and make up the manufacture of "Coca-Cola." I have seen it actually put in. No, during the period around 1889, or from 1886 up to 1892, there were not any substances, or any products or articles, popularly known as coca and cola to my knowledge. These products, as used by the Coca Cola Company, have become popularly known since then, as the name "Coca-Cola."

Cross-examination by Mr. LITTLETON.

It is true that the United States Pharmacopoeia speaks of coca under the name coca, and it has in small letters there "coca foliae, or coca leaves," but it treats of the product coca under the name coca without adding the leaves to it, but I would not consider the United States Pharmacopoeia a popular work. I think possibly it is true that coca was bought and sold commercially under the name coca prior to 1886, and that while they have in some instances used the name coca leaves, the word coca was

(Deposition of A. Wesener.)

used commercially in designating this product, or drug, or plant. The word coca was used in that way among the drug trade, but not in a popular sense, and the common expression was usually erythroxylon coca, or coca leaves, and that was used, of course, among the druggists and the pharmaceutical trade, never used that way in the popular trade. I would say that if the word coca was used in combination with other words to designate other products that the laymen understood that as being chocolate. That would be the popular sense. I do not think for a moment that they would have thought that that was coca, erythroxylon coca, or had any relation whatever to the cocaine plant. Yes, sir, I am familiar with Wine Coca. Yes, sir, I think I have seen the labels that were used on the old bottles of Wine Coca showing pictures of coca leaves and [730] cola nuts thereon, but I think that was sold under another name there. I forget that other name, I think there was a distinctive name for that product. I am not familiar with the fact that Dr. Pemberton made a product called "Pemberton's French Wine Coca." No, I do not know that products similar to that Wine Coca were sold in large quantities in commerce for a number of years prior to 1886, and I do not think that even the Wine Coca—that is, this French preparation that I have in mind—was very popular. It is true that Parke-Davis & Company, of Detroit, manufactured for a great many years a preparation of this character and sold it extensively throughout the United States, but they sold that as a medicinal pre-

paration. I could not consider that a popular drink. A medicinal preparation would not be popular. Certainly quinine is a medicinal preparation. It became popular on account of the extensive malaria that this country suffered from at one time.

Caramel has been in use as a coloring matter for beverages, oh, for a long time, a great many years. I would say that it was used prior to the civil war. Yes, sir, it is now a uniform coloring matter which is used extensively in coloring all kinds of drinks. It is one of the oldest coloring matters on the market and is perfectly harmless. Yes, sir, I think that root beer and sarsaparilla and Moxie and drinks of that character were on the market and sold prior to 1886. I could not say as to whether or not they were colored with caramel at that time because I never made any tests at that time, but caramel could have produced the color that they had.

You ask if the exhausted coca leaves, after the alkaloids have all been removed and the leaves have been subjected to a steaming process and most of the properties driven out of the coca leaves, then this refuse material is used in making Merchandise No. 5 in answering the question I would have to state that I would not consider this residue left after extracting the alkaloids from coca leaves as waste material. It is the residue that contains various principles which are very essential to the manufacture of "Coca-Cola" syrup. I do not know for certain whether or not Dr. Schaeffer's Alkaloid Works, for a long time before it began to make this Merchandise No. [731] 5,

(Deposition of A. Wesener.)

was a large manufacturer of cocaine, I think Dr. Schaeffer spoke of that, at the time I visited the plant, but I am not absolutely sure about that. (Mr. HIRSCH: "I will admit it in the record that he was.")

You ask if they extract the cocaine from the coca leaves in the process of making cocaine in substantially the same way as they do in making this No. 5; well, they use a similar solvent in removing the cocaine from the erythroxylon coca. Yes, sir; they take the cocaine out in the same way. It is one of the processes of removing cocaine from coca leaves. You ask if, prior to the time that Dr. Schaeffer began to make this Merchandise No. 5, he did not destroy the coca leaves after he had extracted the alkaloids from them and throw them away, as refuse material; well, I could not say what he did with the exhausted coca leaves, I am sure; but whether he did or did not burn them does not alter the fact that the leaves did not still have some valuable principle left in them. I do not know of any other use to which the exhausted coca leaves, after being treated in the manner in which they are treated in making Merchandise No. 5, have ever been put to by anybody except to be put into this Merchandise No. 5. So far as I know they have never been put to any other use. But I might say there that you take exhausted vanilla beans, take out the most of the flavor,—that is, the vanillin and the musk contained in the vanilla beans,—still there are very valuable properties left in the exhausted vanilla beans, but the stupid manufacturer has never had

sense enough to improve his process to get out the other good principles left in the vanilla bean. In other words, you could get five times as much vanilla extract out of the vanilla bean as what is obtained by the average manufacturer to-day, because he is using an old, ancient, antiquated method of exhausting or extracting, vanilla beans. He gets out all the vanilla by his process but he does not get out all the best flavors of the vanilla bean by his crude method. **[732]** The characteristic property of coca, or the coca leaf is due to its predominant alkaloid, cocaine. The characteristic property of cola, or cola-nut, is caffeine, and the theobromine. From a strictly chemical and medicinal standpoint, the characteristic property of the coca leaf is removed in making this Merchandise No. 5, but not from a food standpoint or flavor standpoint. When I say food standpoint, of course, I include in that condiments and "Coca-Cola," that is, coca leaves minus the cocaine, still would be considered as a condiment. Coca leaves would not have the same taste and flavor with the alkaloids removed as they have with the alkaloids in them—they might have the same taste and flavor, but there would be one essential difference that the anaesthetic character of the coca leaf would be removed. I would say that the taste and flavor would be pretty much the same excepting that probably it would be a little less bitter and it would not have this local anaesthesia or numbness. I would say that there would be very little difference in flavor between "Coca-Cola" made from Merchandise No. 5 in which the alkaloid

(Deposition of A. Wesener.)

had been extracted and made from Merchandise No. 5 in which the alkaloid had not been extracted from the coca leaves because there is very little of Merchandise No. 5 used, and, therefore, the small percentage of cocaine still left in Merchandise No. 5 would be negligible as to taste. The fact of the business is that the quantity of Merchandise No. 5 in the drink at all is very little; it is less than two per cent, as I understand it. I should guess there is about eighteen gallons of the No. 5 to twelve hundred and fifty gallons of the syrup. I would not want to be certain about that unless I could look up my old records on the subject. I have examined "Coca-Cola" syrup made with Merchandise No. 5 in it and made without Merchandise No. 5 in it, and there was quite a difference as to taste. The Merchandise No. 5 gave the syrup a character which was very distinct, and, without it, it did not seem to have the same flavor, to my taste. I had no trouble at all in telling one from the other when they were put before me as unknown mixtures. I did not know what was in either one of the bottles excepting that I know one was supposed to contain Merchandise No. 5 and the other was to be without Merchandise No. 5. [733] I might elaborate a little more on this question of yours. There are many flavors that are used in drink and food in which the flavor has been put in, loses its character and identity absolutely. Take, for example, Creme de Menthe, this French drink, which is a cordial. To drink that you would believe that it is simply composed of alcohol, syrup, and a very

(Deposition of A. Wesener.)

fine quality of oil of peppermint. If you were to make such a mixture up for your analysis you would find you would have a very, very harsh drink as compared to Creme de Menthe, for the reason that the Creme de Menthe contains vanilla flavor. You do not taste the vanilla in that at all, but that smooths it down and makes it a beautiful blend. The same thing is true of this white crystal syrup, a corn syrup put out by the Corn Products Company. They put on that label "flavored with vanilla." That does not mean that it has a vanilla flavor, but that it is flavored with vanilla. You cannot taste the vanilla in it at all, but if you were to omit the vanilla flavor in that white corn syrup you would have a very inferior tasting product. That smooths it off and secures a very characteristic flavor which the consumer wants. I believe the same thing is true with reference to using Merchandise No. 5 in the manufacture of "Coca-Cola." It gives character to the drink, which, without it, it would not have. I could tell it right off if it did not have Merchandise No. 5 in it. The "Coca-Cola" syrup is only an ingredient of the beverage "Coca-Cola" as it is finally dispensed to the public. In making the beverage from the syrup about six or seven ounces of carbonated water are added to the syrup. You ask if the quantity of Merchandise No. 5 that is in the syrup is not so diluted when the water is added to it that it is inappreciable in the beverage—in the finished product; it was not to my taste because I drank it that way. I diluted it with carbonated water because that was the only

(Deposition of A. Wesener.)

way to make an honest test. Yes, sir, I tried the beverage,—that is, the syrup diluted with carbonated water with No. 5 in it and without it and I could readily tell the difference between them.

Redirect Examination by Mr. HIRSCH.

Parke-Davis & Company make up one product which is known as fluid extract of coca and another product known as fluid extract of [734] cola, but I have never known them to be combined. They are medicinal products. One four-hundredth of one per cent of cocaine would not have any appreciable effect whether of taste, or flavor, or physiologically—that is, on a man, on the average person. I understand that Dr. Schaeffer has a separate and distinct process for making Merchandise No. 5. I saw that process used. I understand it is an invention of Dr. Schaeffer's.

Recross-examination by Mr. LITTLETON.

You asked in what respect Dr. Schaeffer's process for making No. 5 differs from the process for making cocaine; well, I don't know as I know the standard method or process of making cocaine—that is, of producing cocaine from coca leaves. But Dr. Schaeffer uses toluene, which ought to take out the cocaine and leave a great many other parts in the leaves, whereas if you were to take out the cocaine by another solvent, such as alcohol, etc., you would take out a great many other products from the coca leaf which toluene would not remove, and for that reason I cannot answer your question how that differs, because I am not certain that all manufac-

(Deposition of A. Wesener.)

turers use toluene in extracting cocaine from the leaves. I do not know that toluene is the best solvent for taking out everything from coca leaves. There may be other solvents that will take out more products than the toluene, whereas toluene may simply confine itself largely to the extraction of the cocaine, and do it thoroughly. That is something, as I say, I cannot go into because I have not looked up that particular phase of the subject. All I do know is that toluene does remove the cocaine from the coca leaf, but whether that is the best process of extracting cocaine from coca leaves and all the other alkaloids that are present, I cannot answer just now. I would have to look that up and investigate that further. Besides cocaine, toluene takes out of the coca leaf the other alkaloids, too. I don't believe it takes out many other principles. It may take out some of the oils, probably some traces of wax that are soluble in toluene. I imagine the coca wax might be slightly soluble in toluene. I am not familiar with "Pemberton's French Wine Coca." I did not know that that was a preparation made from coca and cola nuts. I have no knowledge of that preparation at all. [735] One four-hundredths of a grain of caffeine is not an appreciable quantity of caffeine. I do not know that five-sixteenths of a grain of coca leaves would be much of a quantity. It probably could be analyzed and proved that there were traces there, but it would not be what I would consider an appreciable quantity.

Deposition of John F. Queeny, for Plaintiff.

JOHN F. QUEENY.

Direct Examination by Mr. HIRSCH.

I reside in St. Louis, Mo., where I have lived for 17 years, or more. Yes, sir, I came to Chicago voluntarily at your request to testify for the Coca-Cola Co. No, I do not expect any pay for my services. No, I do not expect my expenses to be paid. I am connected with the Monsanto Chemical Works, located in St. Louis. That concern has for some years passed been supplying the Coca-Cola Company with caffeine. The Coca-Cola Company is a big and good customer of ours and is a valued customer. I would travel from St. Louis to Chicago to give testimony in their behalf at any time that they might request it, and I am here as an evidence of that fact. I organized the Monsanto Chemical Works in 1901. Prior to that time I was buyer for the Meyer Bros. Drug Company, with which concern I was connected about 17 years. It is a wholesale drug concern. I was the buyer of their drugs, chemicals, and essential oils. Before I was with Meyer Bros. I was connected with Merck & Company of New York, another company also in the chemical business. Their chemicals were manufactured at that time in Germany, but they now have a factory at Rahway, New Jersey. I was with Merck & Company for two years. Prior to that time I was with Meyer Bros. again for two years. With Merck & Company I was the manager of their sales department, and right before that I was with Meyer

(Deposition of John F. Queeny.)

Bros. for two years. Prior to that time I was with I. L. Lyons & Company, New Orleans, wholesale druggists, in the capacity of buyer and druggist. Before that I was with Tolman & King, wholesale druggists, here in Chicago. I was there as a boy in 1872 and I was city buyer and had charge of their salesmen's department when I left there. Since 1872 down to the present time I have been connected with the drug and chemical business, with the exception of about six months, when I was with Devoe, Reybolds & Company, a paint concern here. [736]

Coca leaves are obtained from South America. It is a shrub. Cola nuts are obtained from Africa and grow on a tree. No, in my experience from the time I entered the drug business down to the present date there were no substances, or articles, on the market popularly known as coca or cola or coca leaves or cola nuts. I want to say right there that very often when coca was called for, cocoa or chocolate was very often sought. It is spelled "c-a-c-a-o," but oftener spelled "c-o-c-o-a." That is chocolate. I have known the product "Coca-Cola" over twenty years and have been familiar with it more or less during that time. In my travels I have found it advertised extensively, in my opinion. I had never heard of any other drink up to 1911 down there known as "Coca-Cola." No, I am not familiar with "Fletcher's Coca-Cola" and do not know that there is such a drink.

(There was no cross-examination of this witness.)

Deposition of John W. Rossiter, for Plaintiff.

JOHN W. ROSSITER.

Direct Examination by Mr. HIRSCH.

I reside at 722 North Lockwood Avenue, Chicago. I have lived in Chicago since 1877. At present I am not engaged in business but during all of my business life I was engaged in the drug business, with several concerns. Some wholesale drug houses, laterally with the house of Powers-Weightman, Rosengarter & Company of Philadelphia. Altogether I have been connected with the drug and chemical business about forty-two years. In all my experience as a drug man there have not been any substances or articles on the market that are popularly known separately under the name coca or cola, or coca leaves or cola nuts.

Cross-examination by Mr. LITTLETON.

For a great many years erythroxylon coca has been bought and sold on the market under the name of erythroxylon coca, or coca leaves. The United States Pharmacopoeia names this product coca, and it is known commercially as coca.

Redirect Examination by Mr. HIRSCH.

Yes, sir; that is used in making up drugs. It is known commercially,— that is, known in the drug and chemical trade. No, I should not say that it is not popularly known among the laity generally. [737]

Recross-examination by Mr. LITTLETON.

No, I should not say that, as an article of value

in medicine, it has been dealt in extensively in commerce in this country. There is an alkaloid, cocaine, derived from coca leaves, which is used quite extensively. No, I do not know that along in 1880 there were half a dozen big medicine houses making preparations with coca in them and selling them broad cast over the country. There was one remedy, a patent medicine that was sold quite extensively here for a while that was known, I think, as Wine of Coca. It had quite a sale here for a while. That, to my knowledge, was about the only preparation of coca that was sold very extensively. It was sold as a proprietary remedy. The alkaloid cocaine is the active principle of the coca leaves. Take that and the alkaloids out of the coca leaves and there is not much of the coca leaf left. The active principle of coca leaf is cocaine. In other words, you have taken the spirit out of the body.

Deposition of Philip Jansen, for Plaintiff (Continued).

PHILIP JANSEN.

Direct Examination (Continued) by Mr. ROGERS.

I observed dispensing bottles in some of these places, some of which were marked "Coca-Cola" and when I asked for "coke" I was in some instances served out of a dispensing bottle so marked, and in some instances I was served out of a spigot in the fountain marked "Coca-Cola." I noticed a very great deal of advertising containing the words "Coca-Cola" around the stores and in the vicinity of the

(Deposition of Philip Jansen.)

stores where I called. The conspicuous feature of this advertising was the words "Coca-Cola." I did not observe any advertising of any product anywhere under the name "Koke" or "Dope." Starting on my trip at West Madison Street on July 8, 1913, I first went to the Madison Fruit Store. I went in and asked for "coke." It was pumped from under the counter like any other syrup, with no label upon it as far as I could see. I asked the proprietor if most people asked for "coke" when they wanted "Coca-Cola" and he said, "no," that most of them say "Coca-Cola." I then told him that some one told me over half the people asked for "coke" and I asked him how it was in his store. He said, no, that very few people say "coke" in there, that very nearly all of them ask for [738] "Coca-Cola." I was served by a young Italian who was the party I talked to. I next went to a small drug-store #122 Madison St., next to the Brevoort Hotel. Started conversation with the clerk while drinking a cherry squash. Asked about "Coca-Cola" as a hot weather drink and said, "I heard a fellow ask for it as coke." The clerk said, yes, about half of their customers ask for "coke" when they want "Coca-Cola." In reply to my question about the word "coke" he said, "it is just a nickname." During the conversation the clerk said he had sold about a barrel of "Coca-Cola" syrup every two or three weeks. While there, a young fellow selling drug supplies ordered a "Coca-Cola" asking for it by that name. The clerk drew the syrup from one of the

(Deposition of Philip Jansen.)

sections of the fountain as any other syrup. It was not labeled.

I next went to Buck and Raymer, 155 Madison St., stood drinking Orangeade for fifteen minutes, trying to start a conversation. Two clerks busy and not disposed to talk and I had no opportunity to talk of "Coca-Cola." While there, four people drunk "Coca-Cola." Heard one man ask for "Coca-Cola" but another man and two ladies were out of hearing when their order was given. The "Coca-Cola," was pumped from under the counter as any other syrup.

I next went to A. Arend Drug Company, 182 Madison St. Went in and ordered "Coca-Cola" from the boy at the fountain. It was pumped from under the counter. In speaking of the way people order "Coca-Cola" the boy said, "some ask for 'dope,' 'shot in the arm,' 'poison,' 'morphine,' " I asked if it was called "coke," and he said, "yes, some ask for it under that name, but more often as 'dope,' etc." He said he used to work at a place on La Salle St., where they sold from fifty to sixty gallons of "Coca-Cola" a week. I couldn't get him to say just how many asked for "coke" but he just said, "a great many ask for 'Coca-Cola' under that and the other numerous nicknames." While there, another man came in and asked for 'Coca-Cola" under that name. It was served as mine. I next went to 228 Madison St., where a soda-fountain is operated in conjunction with Briggs Floral Co. Asked for "Coca-Cola" and was served by one of the young Greeks or Italians who run the

(Deposition of Philip Jansen.)

place. The syrup was pumped from under the counter and the spout was labeled "Coca-Cola." [739] The Greek said they didn't sell much besides "Coca-Cola," but thought the public would learn to like "Vin Fiz" and "Cherry Squash." I asked about the two nicknames by which "Coca-Cola" is ordered and he was not as familiar with the word "coke" as he was with "sniff," "shot in the arm" and others. He said, however, that some do ask for "coke" when they want "Coca-Cola," but he thought that most of them said "Coca-Cola."

I then went to the Northwestern Confectionery, 304 Madison St. It was run by Greeks. I ordered a "Coca-Cola," which was pumped from under the counter. I asked if people asked for "coke" when they wanted "Coca-Cola" and the young Greek who served me said, yes. He did not care to converse, however, and I could get nothing out of him except that people do ask for "coke" as well as "dope" and other nicknames. I next went to a candy, fruit, and flower shop between numbers 354 and 358 Madison Street, which shop had no number. It was also run by Greeks. I went in and asked for "coke." The Greek who served me did not understand me, but when I repeated my order he said, "coke? Oh, yes, 'Coca-Cola.'" He drew the syrup from one of the sections of the fountain like any other syrup, and, although the spout was labeled, I could not read it. When he served me I asked if many people asked for "koke" when they wanted "Coca-Cola." He simply looked at me, and, when I repeated the ques-

(Deposition of Philip Jansen.)

tion, he only grinned. From this action I judged that he did not have much to do with the mixing of drinks at the fountain and so could not answer my questions, or else he was just indisposed and not desirous of carrying on a conversation with customers. I next went to a drug-store at 570 Madison, operated by George V. Haering. Went in and asked for a glass of "coke" and the clerk said he didn't have any. Took root beer and asked if there was no demand for "Coca-Cola." He said he had just taken the store and did not know. I asked if he had heard people ask for "coke" when they wanted "Coca-Cola" before and he said, "yes, many times." I asked if more people did not say "coke" than "Coca-Cola" and he said, yes, he thought so. When I asked for "coke" when I went in he said "Coca-Cola? No, we don't have it." I next went to the Drug-store of Frank P. Haesler, 922 Madison St. Went in and asked for a small glass of "coke" and the proprietor immediately said "Coca-Cola?" and pumped the syrup from under the counter. **[740]** Business called him and his assistant to the rear of the store and there was no opportunity to start a conversation. I next went to the store of Wm. Shotts, 1336 Madison St. Went in and asked for a little "coke." A young fellow, evidently a foreigner, served me "Coca-Cola" out of a bottle labeled "Coca-Cola" in red letters. He said they sold a good deal of "Coca-Cola" and showed me the gallon bottles which they used, one or two each week. I asked if many people asked for "coke" and he said, "quite

(Deposition of Philip Jansen.)

a few," but he always knew what they wanted and gave them "Coca-Cola." He then said I should always ask for "Coca-Cola" as there was other stuff called "Koke" and "Cola." He said the advertisement said to ask for "Coca-Cola" as that is the only real article. He also said he served "Coca-Cola" when they asked for "coke," and "Cola" when they ask for "Cola," or use any of the other nicknames.

I next went to the Purity Drug Store, 1364 Madison St. Went in and ordered a "coke" and the clerk served "Coca-Cola" out of a bottle labeled "Coca-Cola" in red letters. He repeated "Coca-Cola" after I said "Coke," and so I asked if it wasn't called "coke," and he said, "yes." He was not disposed to talk and went to the back of the store.

I next went to an ice-cream parlor with no name or number in sight, which was between 1524 and 1526 Madison St. Went in and ordered "coke" and the boy, a foreigner, repeated "Coca-Cola?" and drew the syrup from a section of the fountain marked "Chocolate." There was a bottle labeled "Coca-Cola" in red letters standing on top of the fountain, but he did not use this. I asked him if many people didn't ask for "coke" when they wanted "Coca-Cola" and he said "yes." I asked him if about half of the people didn't ask for "coke" and he said he wasn't sure, but they always got "Coca-Cola" no matter how they asked for it. I asked again about the way people asked for "Coca-Cola" and he said he thought most of them asked for "Coca-Cola." He said he understood what they meant by "coke,"

"dope," and always gave them "Coca-Cola."

I next went to the A. S. Bishop Drug Store, 1528 Madison St. Went in and asked for "Coca-Cola" and was served by a young assistant from a bottle without any label. As he served me I asked if people always asked for "Coca-Cola" or if they sometimes said "coke." He said, "Oh, yes, many people say 'Coke.'" He then went to the rear of the [741] store and there was no chance for further conversation. On July 9, 1913, I went to the store on the South Side of Madison St., 1537, where a sign said Cut Rate Drugs. Went in and ordered a "Coca-Cola" and was served by the proprietor, evidently, who pumped the syrup from underneath the counter. The spout was not labeled "Coca-Cola." I had no opportunity to ask any questions.

I next went to a small candy shop advertising "Davis Chocolates," at 1503 Madison St. Went in and asked for cherry phosphate. Was served by a girl. Saw a bottle labeled "Coca-Cola" in red letters standing on the counter and asked the girl if they sold very much of it and she said, "yes." I asked if people ever asked for "coke" when they were ordering "Coca-Cola" and she said, "yes, many times." I said that a fellow had bet me that at least half the people asked for "coke" and I didn't think so as I hadn't heard people order "Coca-Cola" under that name. She said, "yes, a great many say 'coke' for 'Coca-Cola'" and that the first time she heard the word "coke" she didn't know what it meant. She said, "coke is a rough way to order 'Coca-Cola,' but

(Deposition of Philip Jansen.)

many people use the word."

I next went to a fruit store, 1457 Madison St. Went in and asked for a little "coke." The proprietor a foreigner, said "Coca-Cola?" and took the syrup from a bottle labeled in red letters, it stood on the counter. I asked if many people asked for "coke" when they wanted "Coca-Cola" and he said, "yes, a few." I said that "a fellow bet me that half the people asked for 'coke,' " and he said, "Oh, no," he thought most of them said "Coca-Cola." He then said that the people called it "Coca" in the old country. I asked again about the number of people who used the word "coke." He said there were many nicknames, but he thought about three-fourths of the people asked for "Coca-Cola" while the other fourth say "coke" or some other word.

I next went to the store of John S. Stiles, 1401 Madison St. Went in and bought a cigar from an elderly man, evidently the proprietor. A young clerk came out to the fountain to serve a lady and I asked him if many people ordered "Coca-Cola" under the name "coke." He said no, he didn't remember hearing the word "coke" used very much, though he was familiar with it. He said he had been at the store a year and **[742]** and didn't think more than two or three people had said "coke" in ordering "Coca-Cola." He said many people asked for "Coca-Cola" as morphine and names like that.

I next went to Thom's Place, 1307 Madison St. Went in and asked for a little "coke," but had to say

(Deposition of Philip Jansen.)

"Coca-Cola" before the young Greek who served me could understand what I wanted. I asked if he had ever heard the word "coke" before and he said, "no," and grinned. He evidently did not understand English very well. I asked then if every one asked for "Coca-Cola" as "Coca-Cola" and he grinned and said, "yes."

I next went to James Peterson, Fruits and Candy Store, 1203 Madison St., and asked for a little "coke." A young foreigner served me and the "Coca-Cola" was put up in small bottles. "Coca-Cola" was stamped on the bottle. I asked if many people asked for "coke" when they wanted "Coca-Cola" and he said "yes, quite a few." I told him that a fellow bet me that about half the people asked for "Coca-Cola" under the name of "coke" and the only response was a shake of the head, which might have meant anything. He was not disposed to talk further.

I next went to the store of W. H. Armbrecht, 1065 Madison St., where I ordered a little "coke" and the young fellow immediately pumped "Coca-Cola" syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked him if most people asked for "coke" in ordering "Coca-Cola," telling him of my bet. He said most people called "Coca-Cola," "coke" or "dope," but he thought "dope" a more common expression than "coke."

I next went to Bauer's Pharmacy, 805 Madison St. and asked for a "Coca-Cola." A middle aged man served me, pouring the syrup from a bottle

(Deposition of Philip Jansen.)

labeled "Coca-Cola" in red letters. I stood around ten minutes before I had any chance to ask questions. I finally asked the man who served me if he found that most people called for "coke" in ordering "Coca-Cola." He said, "yes, a great many say 'coke.'" I told him of my bet and added that that sounded big and so I thought my bet a good one. He said, "yes, a great many people use the word 'coke'" but he thought fifty per cent was putting it high.

I next went to the store of G. F. Wisshack & Company, 733 Madison Street and asked for a little "coke." The young fellow who served me didn't seem to understand what I wanted, but when I repeated **[743]** my order he drew some "Coca-Cola" syrup from a section of the fountain labeled "Coca-Cola." I asked if he hadn't heard the word "coke" before and he said "Oh, yes, but I didn't hear what you said the first time." I then asked him if many people ordered "Coca-Cola" under the name "coke" and he said, "quite a few." He added that most of the people whom he had served seemed to ask for "a shot in the arm" and he thought that the word "coke" was used by comparatively few.

I next went to Eli Lipscits Pharmacy, 517 Madison St., and asked for a glass of "coke." A young fellow, a foreigner, served me pouring the syrup from a bottle labeled "Coca-Cola." I asked him if many people ordered "Coca-Cola" under the name "coke" and he said, "yes, quite a few." He then turned to one of the other young fellows who was

working near at hand and asked him if he ever asked for "Coca-Cola" under the name of "coke" and his friend said, "yes," he always used the word "coke." They both agreed that the word "coke" was used by a great many people, but probably not by half of them.

I next went to the Northwestern Fruit House, 509 Madison St., and bought a cigar. Asked the young foreigner, who waited on me, if they sold much "Coca-Cola." He said, "yes, quite a bit." I then asked if some people asked for it under the name of "coke," and he said, "yes a great many of the young fellows always say 'coke.' " I then said a man had bet me that fifty per cent of the people asked for "coke" when ordering "Coca-Cola," and he said, "no, probably not that many, but at least twenty per cent use the word." He repeated his statement about so many of the younger fellows asking for "coke" and said the older people say "Coca-Cola."

I next went to the Security Confectionery Co., 191 Madison St., where I ordered a small glass of "coke." The waiter repeated "Coca-Cola" and pumped the syrup from beneath the counter from a spout which was not labeled. Three waiters were kept busy by by the rush of customers, and, though I stood at the fountain for fifteen minutes, there was no chance to ask any questions. While there, two men and one lady ordered "Coca-Cola" and the syrup was drawn as mine had been.

I next went to the Buck and Rayner, corner State and Madison Streets, and ordered chocolate milk.

(Deposition of Philip Jansen.)

[744] There were many customers and I had no opportunity to ask questions and was finally crowded away from the fountain. Went out on the street for a moment and then returned finding one of the clerks to whom I put my question. I told him I had a bet with a man concerning the way people ordered "Coca-Cola." I asked him if many people asked for "Coca-Cola" under the name of "koke" and he said, "yes, a great many." I said the bet was that fifty per cent of the people asked for "coke" instead of "Coca-Cola" and he said probably more than fifty per cent use the word "coke." He said that in his home town no one said anything but "give me a 'coke'" when they wanted "Coca-Cola." He added that a great many called for "a shot" or "dope" when they wanted "Coca-Cola" and later qualified his statement concerning the number of people who said "coke" by saying that over fifty per cent of the customers called for "Coca-Cola" under the name of "dope," a "shot" or "coke."

On July 10, 1915, I visited the stores on the North side of Madison St., West of Ogden Avenue. I went to 1606 and ordered a chocolate soda from the proprietor. This was a small shop and there were no "Coca-Cola" signs in sight, and I asked the man if he sold "Coca-Cola." He said, no, he didn't have it, but expected to put it in by the end of the week. I asked if there wasn't any demand for "Coca-Cola" and he said, Oh, yes, many of his customers asked for it. I then asked if any of his customers asked for "Coca-Cola" under the name of "coke" and he

(Deposition of Philip Jansen.)

said "yes, and in some places they use the word 'coke' entirely." He said in his home town in Southern Illinois they say "coke" always, when they speak of "Coca-Cola." He also said his brother, who ran a drug-store, often wrote him about his big sale of "coke." I next went to 1662 and bought a cigar. Was waited on by one of the Greeks, who evidently ran the place. I asked him if people ever came in and asked for "coke" when they wanted "Coca-Cola" and he said, no, and shook his head. I then said, a fellow was trying to tell me that most of the people said "coke" instead of "Coca-Cola" and he grinned and said, no. I said I thought nearly every one said "Coca-Cola" and he said, yes.

The next store I went into I asked a young foreigner at the fountain if I could ask him a question about the way people ordered "Coca-Cola." He looked at me as though he didn't understand. **[745]** I told him of my bet and asked if people used the word "coke" in his place. He looked at me very carefuly and asked if I was from the "Coca-Cola" or the "Koke" people, and I said, no. I was simply trying to decide the bet. I repeated the bet and said I didn't think many people said "coke" and he said, no, they didn't. I said I thought most of them said "Coca-Cola" and he said, "yes." He seemed suspicious of me and did not care to talk.

At 1860 I went in aand asked for a raspberry soda. I asked a clerk at the soda-fountain if they sold "Coca-Cola," saying that I didn't find the usual advertisements around the store. He said they did.

(Deposition of Philip Jansen.)

I asked if people ordered it under very many nicknames, such as "dope" and "coke" and he said, yes. He was not inclined to talk and merely smiled when I tried to keep up a conversation. I had no chance to ask how many said "coke" when ordering "Coca-Cola."

I next went to Loren M. Haegler's store, corner Madison and Robey Sts., and asked for a little "coke" and the clerk said, "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in white letters. I asked if many people asked for "Coca-Cola" under this name "coke" and he said, "yes a few, but not a great many." At 2000, I went in and asked for some "coke." The young foreigner who served me could hardly speak English and I had to repeat my order. He finally said "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if he had ever heard people say "coke" before and he grinned and grunted in such a way that I couldn't tell whether or not he answered in the affirmative. When I asked again if some people didn't say "coke" for "Coca-Cola," he simply grinned at another boy standing next to him. I could not get him to speak.

I next went to the store of J. Barry, 2316, and asked for some coke." The woman who served me asked "Coca-Cola"? and then poured the syrup from a bottle labeled "Coca-Cola" in red letters. Crossing to the south side of Madison St., I went to John Myers Drug Store, 2350, and bought a cigar. A woman waited on me. She handed me a small paper

of matches labeled "Coca-Cola." Looking at same, I said, "this company certainly does a lot of advertising," and she said, "Yes, they are always sending us things." **[746]** I asked if people ever ordered "Coca-Cola" under the name "coke" and she said, "What?" I repeated the question and she said she had never heard the word. I said a fellow told me that most people asked for "coke" when ordering "Coca-Cola" and she said it was a new word to her and she wouldn't have known what I wanted if I had asked for "coke." She said the word might be used in the little shops used by Greeks, for they shorten many words in our language.

On July 11, 1913, continuing on the south side of Madison St., I went to Davidson's Chocolate Candy Store and asked for "Vin Fiz." I asked a young clerk by whom I was served, if "Vin Fiz" was not cutting in on the "Coca-Cola" people's business and he said, "Yes, quite a bit." He said they are doing a lot of advertising and I said I thought they would have to go some to do more than the "Coca-Cola" people. I asked if many people said "coke" in ordering "Coca-Cola" and he said, "Oh, yes, lots of them, and many others say "shot in the wrist" or "dope.'" He did not say how many asked for "coke" but said many people came in from the theater next door and say, "Give me a little 'coke'."

I next went to the M. C. Smucker Drug Store, 2259, ordered "Vin Fiz" from a young clerk. I asked him if "Vin Fiz" cut in on the "Coca-Cola" business and he said, "Not at all." He said they

(Deposition of Philip Jansen.)

only sold about one glass of "Coca-Cola" an evening, although he heard they sold a great deal of it on the south side. I asked about the way people ordered "Coca-Cola" and he said most all their customers call for "slow dope." Very few called it "coke," he said. I said I thought some of the nicknames, such as "coke" and "dope," may be harmful to the business, and he said, "No," he did not think so. He spoke of what "Coca-Cola" is, and he said it is merely an extract.

I next went to Tomasek's, 2201, and ordered plain ice cream from a middle aged man. I asked him if people ever ordered "Coca-Cola" under the name "coke" and he said he didn't remember of hearing people use the word "coke." I told him that a fellow bet me that half the people asked for "coke" and he said, "Oh, no." He said he thought about every one asked for a little "Coca-Cola." He said many people had tried to sell him other syrups similar to "Coca-Cola," but he didn't want to get in trouble for the sake of saving a few cents. **[747]**

I next went to the Slaytor Drug Company, 2159 Madison St. and bought a cigar from the young clerk. I asked him if many people asked for "coke" in ordering "Coca-Cola" and he said, "No, he didn't know the word." I told him of my bet and he said he hadn't heard the word used. He said people always asked him for "Coca-Cola." When I spoke of the numerous nicknames, such as "dope," "coke" and "morphine."

I next went to the drug store at 2059 Madison

(Deposition of Philip Jansen.)

Street and asked the clerk for a little "coke." I had to repeat my order and finally had to say "Coca-Cola" before he understood me. I asked if people did not say "coke" when ordering "Coca-Cola" and he said, "No, he hadn't heard the word before." He said a man came in and said they couldn't sell "Coca-Cola" in some places in the south. His syrup was pumped from beneath the counter and the spout was labeled "Coca-Cola."

I next went to Bell's Candies, 1617 and 1619 Madison Street and asked for a little "coke." I had to repeat my order and then the waiter turned and said, "Double C," to the man behind the counter. I had to sit at a table and when the man who took my order went to fill it, I could not tell where the syrup came from, but it was beneath the counter somewhere. On my way out I looked over the counter and everything seemed to be in bottles.

On July 17, 1913, I took up the west side of Cottage Grove Avenue, south of 22d St. I first went to the Richard's Drug Store, between 2258 and 2302 Cottage Grove Avenue, and asked for a little "coke" and was served by a colored man who pumped the syrup from a nickle tank which stood on the fountain. The tank was not labeled. I asked if many people asked for "coke" and he said, "Yes, twice as many ask for that as anything else." Thinking he thought I was asking about the number who drink "Coca-Cola," I asked if people didn't ask for "Coca-Cola" under many nicknames, such as "coke" and "dope." He didn't pay much attention to me,

(Deposition of Philip Jansen.)

but kind of nodded his head, grunted and then walked away. There was no chance for further questions. [748]

I next went to Mitchell's Drug Store, 2209 Cottage Grove Avenue, and said, "I guess I will have a little 'coke,'" and a middle-aged man, evidently the owner, served me, pouring the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people called for "coke" in ordering "Coca-Cola" and he said, "Oh, yes." I said I guessed they called it all kinds of names and he said, "Yes." I next went to 2904 Cottage Grove Avenue and asked the foreigner for a little "coke." He did not understand me, and, after repeating my order, I had to say "Coca-Cola." He served me bottled "Coca-Cola." I asked him if people didn't ask him for "coke" when they wanted "Coca-Cola" and he said, "No, they say 'Coca-Cola.'" He said in the winter some people ask for coca when they want hot cocoa, but they all say "Coca-Cola" when they want that.

At 2916 Cottage Grove Avenue, I asked the woman for some "coke." She said, "What?" and I said, "Coca-Cola." She gave me bottled "Coca-Cola," which was labeled. I asked if people didn't say "coke" when ordering "Coca-Cola" and she said, "Quite a few."

At Grove Pharmacy, 3100 Cottage Grove Avenue, I asked for a little "coke." A clerk served me and pumped the syrup from beneath the counter. I asked if many people ordered "Coca-Cola" under the name "coke" and he said, "Yes, he thought most

(Deposition of Philip Jansen.)

of them said 'coke.' " He said, "That is a shorter word and 'Coca-Cola' is to much to say."

At the drug-store, 3300 Cottage Grove Avenue, I went in and asked for a little "coke" and was served by a middle-aged man, who poured the syrup from a bottle labeled "Coca-Cola" in red letters. When asked if he found that many people asked for "coke" in ordering "Coca-Cola" he said, "Oh, a few." He added that quite a few asked for "dope" but he didn't think very many said "coke." He said some people used to think "Coca-Cola" had cocaine in it until the Government analysis proved that it didn't. He said, also, that there was nothing like that in it for if there was he would be a dope fiend as he drank lots of it. He said he could quit it any time, and if there was cocaine in it he wouldn't be able to stop drinking it. **[749]**

At 3640 Cottage Grove Avenue I asked a young clerk for some "coke." I had to repeat the order and then said "Coca-Cola." When asked if people didn't say "coke" when ordering "Coca-Cola" he smiled and said, "Oh, a few say 'coke.' " He poured the syrup from a bottle labeled "Coca-Cola" in red letters. At 3900 Cottage Grove Avenue, I asked the girl behind the counter for some "coke" and she poured "Coca-Cola" from a bottle which evidently had been labeled but the label was washed off. When I asked for "coke" she said "Coca-Cola?" I asked if many people said "coke" when they wanted "Coca-Cola" and she said, "Yes, quite a few." She

(Deposition of Philip Jansen.)

said, "One man comes in each day and calls it his coffee."

On July 18, 1913, I took up the west side of Cottage Grove Avenue, going first to 2906, where I said, "Give me a little 'coke.'" Was served by a foreigner who took the syrup from a bottle labeled "Coca-Cola" in red letters, which stood upon the fountain. He repeated "Coca?" after I said "coke." I asked if people said "coke" in ordering "Coca-Cola" and he said, "Yes." I asked if very many said "coke" and he said, "Oh, quite a few, but in the south every one says 'coke.'" He said he didn't think he ever heard any one say "Coca-Cola" in the south. He then spoke of the law suit about "Coca-Cola" containing cocaine.

I next went to the Oakland Candy Shop, corner Drexel Blvd. and Cottage Grove Avenue, and asked for some "coke." The woman said "Coca-Cola?" as she reached for the syrup that was in a bottle labeled "Coca-Cola" in red letters. I asked if many people said "coke" when ordering "Coca-Cola" and she said, "Yes, quite a few." She seemed very familiar with the word.

At 3984 Cottage Grove Avenue, I asked for some "coke" and the man repeated "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" that stood on the fountain. I asked if he didn't hear the word "coke" very often and he said, "No." I said "Then you don't think may people order 'Coca-Cola' under the name of 'coke,'" and he said, "No, that he very rarely heard the word."

(Deposition of Philip Jansen.)

At Walgreen and Thorson's, 4134, I asked for some "coke." The boy smiled and said "shot in the arm?" He poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people asked for "coke" in ordering "Coca-Cola" and he said, "Yes, quite a few." [750] I told him that a fellow wanted to bet me fifty per cent of the people said "coke" and he said, "Oh, not that many, you ought to take the bet." He said, "Fellows unknown to me come in and ask for 'Coca-Cola,' saying 'Give me a shot in the arm.'" He said that more people say "dope" and "shot in the arm" than "coke." He said that Walgreen and Thorson, who have five stores on the south drive, have a contract selling for about 14 gallons of "Coca-Cola" syrup a week, so that shows it is a good seller on the south side. While I was there a man came in and asked for a "Coca-Cola" using the full name, and the clerk winked at me as he filled the order.

At 3269, I asked him for some "coke." The clerk poured the syrup from a bottle labeled "Coca-Cola" in browish red letters. I asked if many people called it "coke" and he said "Yes, quite a few come in and say, 'Give me a "coke" or "dope."'" He was very familiar with the word.

At 2839 I asked for some "coke." A young clerk pumped the syrup from beneath the fountain from a spout which was not labeled. I asked if many people called "Coca-Cola" "coke" and he said, "Yes, indeed." He said about three-fourths of the people say "coke."

(Deposition of Philip Jansen.)

On July 19, 1913, I continued on the west side of Cottage Grove Avenue. At 4210 I asked for a little "coke." I had to repeat the order and then the man said, "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters. As he mixed my drink I asked if people around there called that "coke" and he said "'Coke' or 'Coca-Cola,' it's all the same."

At 4256 I bought some Fatimas and then asked for some "coke." The man said "Coca-Cola?" and drew the syrup from a china fountain labeled "Coca-Cola" in red letters, which stood upon the counter. I asked him if people around there called "Coca-Cola" "coke," and he said, "Oh, yes, about all of them say 'coke.'"

At 4340, I asked the woman for some "Coca-Cola." She took the syrup from a bottle beneath the counter, but I couldn't see whether or not it was labeled. I asked if she had heard people call "Coca?Cola" "coke" and she said, "No, she never heard any one call it anything but 'Coca-Cola.'" **[751]**

I next went to 4300 Cottage Grove Avenue and asked for some "coke." The boy said "Coca-Cola?" and drew the syrup from a china "Coca-Cola" fountain, which stood on the counter. I asked him if he heard the word "coke" very much and he said, "No, people always asked for "Coca-Cola.'"

I next went to #4458 Cottage Grove Avenue and asked for a little "coke," and, as the clerk took "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters, he said, "Will you have it in a

glass or in the arm." I said I guessed I would have it in a glass, and asked if many people called it "coke." He said, "Oh, yes, a great many," and then went to the back of the store.

I next went to the store at the corner of Cottage Grove Avenue and 47th Street and asked for some "coke." The foreigner said "Coca?" and took the "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people said "coke" for "Coca-Cola" and he didn't seem to understand. I asked if people called for "coke" instead of saying "Coca-Cola." He said, "Many say that, it is easier than saying 'Coca-Cola.'" To him "coke" seemed to be pronounced "coco."

At 4700 Cottage Grove Avenue, I asked for a little "coke." The boy, a foreigner, said "Coco?" and pumped the syrup from a small metal fountain that stood on the counter.

At #4858, I asked for a little "coke." The woman behind the counter said "Coca-Cola?" and took the syrup from a bottle beneath the counter. She did not lift the bottle high enough to enable me to see whether or not it was labeled. I asked her if people ever say "coke" and she said, "Oh, some times," in a way that would indicate that she did not hear the word very much. She added that she sold a great deal of "Coca-Cola" and "Vin Fiz."

At 5012, I asked for a glass of "coke." The girl said "What?" and I repeated "coke." She said "Coca-Cola?" and I asked if people ever called that "coke." She answered, "Well, some do, yes." She

(Deposition of Philip Jansen.)

drew the syrup from a section of the fountain marked "Coca-Cola."

At 5034, I asked for a glass of "coke." The man said, "Coca-Cola?" and, after serving me from a bottle labeled "Coca-Cola" in red letters, went to the back of the store. **[752]**

At the Southeast corner of Cottage Grove Avenue and 4700 St. I went in and asked for a glass of "coke" and the young man said "Coca-Cola?" and pumped the syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked if they called that "coke" very much around here. He said, "yes, that's about all they call it now."

At the Southeast corner of Cottage Grove Avenue and 43d St. I asked for a glass of "coke." The young clerk said "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if people used "coke" very much and he said, "oh, yes, we sell a lot of it, we buy it by the barrel. I drink a lot of it myself." I asked if people call it "coke" when they order it and he said, "oh yes, and we get calls for 'shot in the arm' from a lot of them."

On July 21, 1913, I took up the East side of North Clark St. At 151, I asked for some "coke." The clerk took the "Coca-Cola" syrup from a section of the fountain marked "Coca-ola." I asked if people around here called "Coca-Cola" "coke." He said, "oh, yes, they do everywhere." He said they say "coke" more in the South than they do here. He added that they sell an awful lot of it in the South

(Deposition of Philip Jansen.)

and in some of the office buildings boys are employed to bring trade.

At #163, I asked for a little "coke." The foreigner who served me took the syrup from a bottle labeled "Coca-Cola" in red letters. I asked him if many people called it "coke." I had a hard time making him understand what I meant but he finally said, "oh, a few." He said more people called it "coke" in the South where one store sells as much as ten in Chicago.

At #193, I asked for a little "coke." The clerk repeated, "Coca-Cola?" I asked if many people said "coke" and he said, "oh yes," and then went to the rear of the store.

At the Northeast corner of Lake and Clark Streets I asked for some "coke." The foreigner said "Coca-Cola?" and pumped the syrup from a small tank labeled "Coca-Cola." I asked if people called it "coke" and he said, "what do you mean?" I said, "do people say 'coke' when they order 'Coca-Cola?'" and he said, "oh yes, some do." He was familiar with the word after he understood what I was driving at.

At #421, I asked for some "coke." The man drew the "Coca-Cola" [753] syrup from a china fountain marked "Coca-Cola" standing on the counter. I asked if many people called it "coke." He looked up and said, "yes," rather abruptly and left me.

At #529 I asked for some "coke." The boy, a foreigner, said, "Coca-Cola?" and pumped the syrup

(Deposition of Philip Jansen.)

from a metal fountain standing on the counter.

At #637, I asked for a little "coke." The boy drew the "Coca-Cola" syrup from a section of the fountain not labeled "Coca-Cola." I asked if many people call it "coke" and he said, "yes, lots of them." He added, "that is all they go by, 'coke.'"

At #803, I asked for some "coke." The man, a foreigner, said, "Coca-Cola?" and drew the syrup from a section of the fountain marked "Coca-Cola." I said, "don't people out here call that 'coke'?" He said, "yes" and grinned. I said, "I guess a great many people call it 'coke' everywhere," and again he just said, "yes."

At #849, I asked for a little "coke" and a small boy served me, pouring "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters. I asked him if people called "Coca-Cola" "coke." He smiled and said they called it everything.

At #861, I asked for some "coke." The boy, a foreigner, poured "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters. I asked if people around here called "Coca-Cola" "coke" and he said, "sure."

At #1039, I asked for some "coke." The man pumped the syrup from beneath the fountain. It was not labeled. I said, "I suppose people call that 'coke' around here" and he said, "no, 'Coca-Cola.'" He later added that some do ask for "coca."

At the Northeast corner of Clark and Division Streets I asked for some "coke." A boy pumped the syrup from beneath the counter. I asked if

(Deposition of Philip Jansen.)

people called "Coca-Cola" "coke" and he said, "no, they call it 'Coca-Cola.'" An older clerk who stood next to the boy heard my question, smiled and seemed on the point of saying, "yes," when the boy answered, "no."

At #1310, I asked for some "coke." A young clerk poured the syrup from a bottle labeled "Coca-Cola" in red letters. **[754]** I said, "I suppose a lot of people call that 'coke.'" He said, "yes, 'coke' and 'dope.'" He added "South of Kentucky they all call it 'dope.'"

On July 22, 1913, I continued on the East side of North Clark Street. At 1405 I asked for a little "coke." The boy said "Coca-Cola?" and pumped the syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked if many people call it "coke." He said, "no, they say 'shot in the arm' around here." He added that in the South they all say, "give me a glass of 'dope.'"

At #1561, I asked for some "coke." The clerk did not hesitate to pour syrup from a container marked "Coca-Cola." I asked if people call it "coke" *very and* he said, "yes, many say 'coke' and 'dope.'"

At #1956, on the West side of North Clark Street, I asked for a little "coke." The boy, a foreigner, said, "what?" and I repeated, "coke." He asked "Coca-Cola?" and took the syrup from a china fountain marked "Coca-Cola," which stood on the counter. I asked if people called it "coke." Thinking I had asked the name of the stuff, he said, "Coca-

(Deposition of Philip Jansen.)

Cola." I said, "I know, but do people call it 'coke' around here?" He kind of shook his head. I turned to another boy who was behind the counter and said, "don't they ever call it 'coke'?" He smiled and said, "yes, it's short."

At #1166, I asked for some "coke." The man, a foreigner, didn't *understood* me, but finally said "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters. I said, "don't they ever call that 'coke' around here?" He puckered up his lips and said, "naw."

At #1000, I asked for some "coke." The man said, "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people called this "coke," or if most of them say "Coca-Cola." He said, "I guess most of them say 'Coca-Cola,' but some say 'coke.'" I told him a man had bet me that half the people said "coke" and that I thought that was too many, although I knew some called it "coke." He said, "no." He said, "I guess they call it lots of names." He later added that some one ought to make a syrup like "Coca-Cola" and call it "coke." **[755]**

At #920, I asked for some "coke." The man said "what?" and then said "Coca-Cola?" and took the syrup from a bottle labeled in red letters. I asked if people ever called that "coke" here and he said, "oh yes." I asked how many say "coke," and received no answer.

At #800, I asked for some "coke." A young

(Deposition of Philip Jansen.)

clerk served me from a bottle labeled "Coca-Cola" in red letters.

At #732, I asked for some "coke." The man, a foreigner, said "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters.

At #660, I asked for some "coke." An elderly man served me, taking "Coca-Cola" from a bottle labeled "Coca-Cola" in red letters. He repeated "Coca-Cola?" after I asked for "coke." I asked if many people called that "coke" around here. He said, "oh, yes, some do," and then disappeared in the rear of the store.

At #65 Monroe Street, I asked for some "coke." After drinking it I asked one of the clerks, a big good-looking Irishman, if many people called "Coca-Cola" "coke." He said, "yes, a great many." I told him that a man had bet me that fifty per cent of the people say "coke." He said, "yes, easily that many." He added that nine out of ten say "coke," or used to. He said there was a syrup like "Coca-Cola," called "coke," so when people asked for "coke" they got "coke" so now some of them say "Coca-Cola." The fact that there was such a syrup as "coke" broke some of the people of the habit of calling "Coca-Cola" "coke."

Cross-examination by Mr. LITTLETON.

Yes, sir; in one of the places where I went on my rounds, I asked the proprietor, or the man there, for "coke" and he asked me if I would have it in a glass or in the arm. It is also true that, although some of these stores were just a few doors from the others

(Deposition of Philip Jansen.)

the dispenser or proprietor in one of them had heard the word "coke" used somewhat and the other fellow never had heard of it and did not know what it meant at all. No, sir, I do not know "Coca-Cola" when I get it. I do not know whether the drinks they served me were "Coca-Cola" or not. I do not know the taste of "Coca-Cola." I have drank it, but could not identify it. **[756]** I do not know of so many things that taste like that, but I cannot guarantee that it is "Coca-Cola." You ask why I say that, and, if I do not know anything that tastes like it, why it is that I cannot tell it when I taste it; I accept it as "Coca-Cola" when I take it. I know the taste of what they call "Coca-Cola." The bottles are labeled "Coca-Cola" from which they serve when you ask for "Coca-Cola." I do not know from the taste that what I got up here in every instance was "Coca-Cola." Those people I went to see were people who dealt in "Coca-Cola" and handled "Coca-Cola." They did not handle any other drink that I know of that was similar to "Coca-Cola." In many places the expression "give me a shot in the arm" or "give me a shot in the wrist" or "give me a shot" seems to be very prevalent around Chicago. I don't remember of so many people stating that it had cocaine in it. You ask if there is not a considerable number of people who think it has cocaine in it; I don't know. I remember one dealer who said that his customers used to think that it had cocaine in it. At times they ask for it as "cocaine" and "morphine." I have heard of a cocaine fiend, but I don't

(Deposition of Philip Jansen.)

think I have ever heard the expression "coke fiend" used with reference to a cocaine fiend.

I am 22 years old and made these rounds in July, 1915. After I had completed the whole investigation, I gave the information I got on these rounds to Mr. Rogers, and all this information was in his possession at the time this suit was brought in this case. I was a student at Michigan University until this June. I graduated this year. I was taking the classical course. You ask how I happened to make these rounds, anyway, and what interest I had in it; I was simply out of work and Mr. Rogers offered it to me as some work in the summer. It took me less than a week to make these rounds. (Defendants object to this character of testimony as to the nicknames because not warranted by the pleadings, and to the hearsay portions thereof because purely hearsay, and to the impressions and assumptions of the witness because incompetent. Objection overruled. Exception.)

STIPULATION.

The following stipulation was agreed to and signed by counsel for plaintiff and defendant: [757]

It is not necessary for the plaintiff to further connect up the three samples referred to in the testimony of Dr. Charles E. Caspari, it being agreed that the samples examined by Dr. Caspari were samples of the product manufactured by the defendants herein, and it is further agreed that it is not necessary to produce as witnesses those people who purchased the samples, it being agreed that they would have

testified that they purchased direct from one of the Koke Companies, except in the case of the sample obtained direct from J. H. Van Deusen, and counsel for defendants hereby withdraw their objection to that portion of the testimony of Dr. Caspari as to the method by which he obtained the samples.

(This was all the testimony in chief taken and introduced by the plaintiff on the trial of this cause.)

[758]

Deposition of Henry Boerger, for Defendants.

HENRY BOERGER.

Direct Examination.

Forty-six years of age; business for twenty-six years has been bottler of soft drinks. Working first for others and then for myself. I have been in business for myself for fifteen years and the place of business is located on Williams Street, Chattanooga, Tenn. I have lived in Chattanooga thirty-one years. During that time I have bottled a good many different flavors of lemon, strawberry, ginger-ale, and all the general line of soft drinks. I have bottled a number of cola drinks, Wine of Coca, Gayola, and Diehl's Star-Cola. I bottled Wine of Coca about eleven years ago. The color of Wine of Coca is a dark brown. It was the same color as Star-Cola, and the same as Coca-Cola. Gayola has the same color. The taste of these Cola drinks mentioned are all very near the same, similar in taste. When I first bottled Coca-Cola we used the Hutchinson stopper, that is a different-shaped bottle, but for the last ten

(Deposition of Henry Boeger.)

years we have been using the crown-stoppered bottle nearly altogether. The crown-stopper bottle we have been using is the same shaped bottle as other drinks are put up in, only other soft drinks are put up in a light glass bottle while the most of Coca-Cola is put up in amber bottles. That is the way they bottle it in Chattanooga. Cola drinks are sold in Chattanooga now, also Tru-Cola, and Koke, and Maud Miller. I bottled Koke. The Central Koke Company makes Koke. I get mine from Chattanooga. Defendants' Exhibit No. One is a bottle of Koke I bottled in Chattanooga. I have been putting up soft drinks of various kinds in bottles of that general size, appearance, for about nine or ten years, using the Hutcheson Stopper Bottle. I would not know a bottle of Coca-Cola if I saw it, by the color, shape or size. Although some bottles are a different size from the Coca-Cola bottle, I would not know a glass of Coca-Cola if I saw it, by its color, because there are other drinks of the same color besides, for instance, root beer and other cola drinks, sarsaparilla. There are lots of [762] other bottles that have the same shape as Coca-Cola. I would not know a glass of Coca-Cola by its taste, because there are other drinks that taste similar to it and I never drink very much of it. I have known of other drinks on the market, similar in color, taste and appearance to Coca-Cola, for about ten or eleven years. I have been bottling Koke for about eleven months, soon after the Central Koke Company started in Chattanooga.

Offer in evidence Defendants' Exhibit No. I.

(Deposition of Henry Boeger.)

Cross-examination.

I handled a product called Star-Cola three or four years ago, made by Diehl, of Nashville. I first heard of Gayola about three years ago made by The Gayola Company, of Memphis, Tennessee. Wine of Coca was made by a firm in Atlanta, I think, and I bottled that some nine or ten years ago. These drinks are generally known as Cola drinks. I have been bottling Koke about eleven months. I buy syrup from the Central Koke Company, in Chattanooga, and add carbonated water to it and bottle it. I get the syrup in a barrel colored red. Have been getting it in that form for eleven months. I did not get any before that. The first I knew of the drink under the name of Koke was about eleven months ago.

Redirect Examination.

The color of the barrels the Gayola Syrup came to me in was red. I think the color of the barrels the Star-Cola came to me in was red, I am not positive. The color of the syrup of Gayola is similar with Coca-Cola syrup. The color of Star-Cola syrup is the same color as Coca-Cola syrup. The Wine of Coca syrup is the same color as Coca-Cola syrup. I have never seen any syrup for a cola beverage that was not that same color. I have never seen a cola beverage on the market that was not substantially the same color as Coca-Cola. I think there are hundreds of Cola beverages on the market. Besides those I have mentioned are Afri-Kola, and Ala-Kola.

(Deposition of Henry Boeger.)

Recross-examination. [763]

Afri-Kola has been on the market ten or eleven years. Ala-Kola about three or four years. These drinks are what I would describe as cola beverages.

Deposition of J. M. Wheeler, for Defendants.

J. M. WHEELER.

Direct Examination.

Fifty-one years old, my business near-beer business, and before that I was a heater by trade. I was with the Chattanooga Brewery about four years before I went into the business. I have been in the near-beer business since 1901, and I handle soft drinks at my establishment. I handle them in bottles. I handle four kinds of soda water, Coca-Cola, Maud Muller, Koke, Rye-Ola, and Tru-Cola. I do not know as I can tell any difference in the color of these beverages compared with the color of Coca-Cola, as they all appear to be the same thing. The size, shape and general appearance, etc., of the bottles that these other Cola beverages are put up in compared with the Coca-Cola bottle are very much the same thing. There is very little difference in the taste of these cola beverages compared with the taste of Coca-Cola. I have had customers come into my place and ask for a Dope, and when they do I give them some kind of Cola drink. I serve them the first thing that is handy when they ask for a Dope, any kind of Cola drink. I have served Rye-Ola and Tru-Cola when they have asked for a Dope. When customers ask for a Dope I take it for granted they want

(Deposition of J. M. Wheeler.)

some kind of cola drink, they do not want any particular kind.

Mr. ROGERS.—We object to that as incompetent, the witness pretending to testify what other people think.

Objection overruled, and appeal prayed and granted.

I do not regard a request from a customer for a Dope as a specific request for Coca-Cola exclusively. When customers come in and ask for a Dope I take it for granted that any kind of Cola drink will suit them. If they call for Coca-Cola I will give it to them, and if they do not, then any other cola drink that is handy I hand to them. I have never had any of these cola drinks other than Coca-Cola **[764]** refused on the ground that it was not what they asked for when a customer asked for a Dope, and I served this other drink in response to that request. I am about my stand most all the time so I can hear the requests my customers make for drinks that way, the customers ask for these Cola drinks in just any kind of a name. What have you got, what kind of soft drink have you? Sometimes I will call over what I have for them and they will say, "Any of them will do," it does not make any difference to them. I serve near-beer to customers by nicknames, too. Some of the nicknames they ask for it by are, a glass of foam, slop, suds, and so on. I do not regard that as a specific request for some particular brand of near-beer. They just want something out of the keg. I regard those names as general nicknames and applicable to

that class of drink. Dope is pretty much the same way, they just want something of that *lind* of drink, they don't mean any one drink when they come in and call for a Dope. I would not know a bottle of Coca-Cola if I saw it and did not see the name of Coca-Cola on the side of the bottle. It is pretty much the same bottle as the other Cola drinks, the same shape, and if you don't see the lettering on it I do not suppose you could tell the difference. I would not know a glass of Coca-Cola by its color and I could not swear that I could tell it by its taste. Cola beverages are similar in taste, color and appearance. Maud Muller tastes a little like it. I have also handled Koke. I got it from the Chattanooga Bottling Works. The size, shape and general appearance of the Koke bottle used compare pretty much the same with those used generally in the trade for other cola beverages. The color of Koke is the same as the color of other cola beverages. I do not see any difference in the taste and it would take an experienced Coca-Cola drinker to tell the difference. I cannot tell it. I would not know a Coca-Cola barrel if I saw it unless there was lettering on it. I have known of these other cola beverages similar to Coca-Cola, in color, taste and appearance for four or five [765] years.

Cross-examination.

I have been handling Coca-Cola for eight or ten years. I commenced handling Rye-Ola shortly after Zimmerman put it out, and have been handling Tru-Cola a year or so. I started to use it when it first

(Deposition of J. M. Wheeler.)

came out, also Maud Muller, it was about the same time, about a year ago. It is my understanding the Chattanooga Brewery, connected with the Beverage Extract Company, put out this Maud Muller. These drinks I have mentioned are served in bottles. When a man comes to my place of business and asks for a drink I pull the crown off and hand the drink to him. I pour it in the glass or set the glass and bottle up on the bar. I commenced handling Koke after this bottling works commenced putting it out, about eleven months ago. I had heard the term Koke prior to that time, prior to eleven months ago when they asked for a Dope or a Koke I gave them any kind of Cola drink we had. I have possibly been handling Coca-Cola, approximately eight years. If a man came in between eight and nine years ago and asked for a Dope or a Koke, if I did not have any other cola drink except Coca-Cola, I would give him that, because I did not have anything else to give him.

Deposition of E. W. Freeman, for Defendants.

E. W. FREEMAN.

Direct Examination.

Fifty-nine years old, resided in Chattanooga for forty years. I have been in the saloon business about thirteen years, and during that time handled and dispensed soft drinks as well as liquors and beers and things. During all this time in Chattanooga, I have handled cola drinks. Some of the drinks are Coca-Cola, Rye-Ola, Ala-Kola, Maud Muller, Sarsaparilla, soda. I do not quite remember whether I

(Deposition of E. W. Freeman.)
ever handled any Tru-Cola or not. I have been about the bar so I could hear the words customers used in asking for the different drinks they wanted. I am a bar-tender and have known of the cola drinks other than Coca-Cola, possibly eight years and perhaps longer. I have been handling other Cola drinks since I have been **[766]** in the saloon business, the greater portion of that time. I would not know a bottle of Coca-Cola by its size, shape and general appearance unless it had Coca-Cola blown in it, or something like that. I do not believe I could distinguish a glass of Coca-Cola from any other drinks, or dopes, whatever they call them, if you set three or four of them out in a glass on a table, I do not believe I could distinguish Coca-Cola from Koke or Maud Muller or anything like that. I never did drink but very little of any of these soft drinks and I do not know whether I could tell a glass of Coca-Cola by its taste from any of these other cola drinks, or not. I do not suppose I could. I am not familiar with the taste of it. I handle the product Koke. I do not know who makes it, I buy it from The Chattanooga Bottling Company. When customers come into my store and ask for a Dope I give them most any dark-colored bottled drink, Koke or that Ala-Kola, it used to come handy and I used to give a good deal of that, Maud Muller, I give all of these. I have *know* of the drink Ala-Kola for the past few years, and of Rye-Ola about the same time. I understand when a customer asks for a Dope that most anything you give him out of a dark bottle suits him just as well as

(Deposition of E. W. Freeman.)

if he had called for any particular name of a drink of that class, a cola drink, a drink of that same general taste, color, exhilarating effect, and so forth. I take Dope in general as a name for all of those colored drinks. If a man comes in and wants Coca-Cola, he will say, "Give me Coca-Cola." I have heard only Koke and Dope applied to these Cola drinks. I have heard of these names Koke and Dope, a fair estimate, of about eight years. I understand them to be a class of anything that suits their taste. I do not believe I would know a Coca-Cola barrel unless I seen a label on it, but I believe the color was red. I served beer at my establishment, and the names they ask for it by besides beer, are German courage, suds, and such as that, something like that. I do not regard requests for beer under those names as requests for any specific brand of beer. [767] I have handled a number of different kinds of beer, I do not see but very little difference in the color of the different kinds. It all tastes like beer to me. I also handled in my place of business sarsaparilla, or root beer, Hires Root Beer and sarsaparilla. I have known of those drinks for years. The color of root beer and sarsaparilla as compared with Coca-Cola, the sarsaparilla is darker and Hires Root Beer is lighter. I do not know whether I could tell a glass of sarsaparilla or a glass of Coca-Cola or a glass of Koke or a glass of Ala-Kola or anything, set them out there, I do not know—I do not believe I can pick them out just in a glass, they are colored so much alike. I have never seen a Cola beverage that was

(Deposition of E. W. Freeman.)

not the same general color of Coca-Cola. They generally taste about alike to me and put up in the same general style of bottle, color and all. Up to the time I quit business two or three days ago I was not handling Coca-Cola at all. Prior to that, I did, at the time I was working at the Patten—when I was working there before, they handled Coca-Cola there, but the last time they did not handle it.

Cross-examination.

At the Patten the last time, was where I was. It has been two weeks ago since I quit at the Patten Hotel or Patten Buffet, as we call the bar, owned by Luke Pogue. Mr. O'Grady is not interested in that bar. I think he is in the whiskey and soft drink business, do not know what brand of whiskey he handled.

Mr. LITTLETON.—We object to that as entirely incompetent. Mr. O'Grady is not a party to the suit, not a witness, and has nothing to do with the lawsuit.

Objection overruled and appeal prayed and granted.

The brand Old Wakeman is handled by him. Old Wakeman was handled at the Patten Hotel Bar when I first went to work there. Mr. O'Grady's concern is The Wakeman Distilling Company, I think. About the time I quit it was not handled at all, it was handled about the time Mr. Pogue got hold of it, but he quit handling it altogether, [768] I worked prior to that time at the Signal Mountain Inn. I worked before that at the Rosebud Saloon or Bar. The Signal Mountain Inn has a bar also. I

(Deposition of E. W. Freeman.)

worked at the Bar, at the Stag, at the old Gin-Fiz, for a Mr. A. Averett, at the Stag Hotel, the Couvier—I think those are the principal places. I have worked at the Patten Hotel Bar on two different occasions. The last time I worked there they were not handling Coca-Cola. They were selling it the first time, that has been three years ago. I am not positive about whether I ever handled Tru-Cola or not. Have known of this drink Coca-Cola approximately seven or eight years, maybe ten years. I have been in the saloon business thirteen years. I do not remember whether they were handling it then or not. I have known of this drink Ala-Kola four or five years. Rye-Ola about the same length of time; I think they came out about the same time. Maud Muller has not been out but a few years, I do not know how long. I sold Coca-Cola longer than any other, because that is the oldest, of that character. If a man came into my place of business and asked for a Koke I would give him almost anything, the first thing I got my hand on, if I was very busy. Sometimes I asked him if he wanted Coca-Cola. He would say, "Give me some Dope; I don't care." When the other drinks were on the market and a man came in and asked for a Dope and I was not handling anything but Coca-Cola I would have to give him Coca-Cola. These other drinks are served over the bar when they are called for, the cap or crown is pulled off and then you place the glass and bottle on the bar. I never handled Koke only the last time I was working at the Patten Hotel. I knew of it about two years ago, I

(Deposition of E. W. Freeman.)

had heard the name before, heard these names Koke and Dope before the other drinks came on the market.

Redirect Examination.

I have heard of and handled Root Beer and Sarsaparilla all the time I have heard of and handled Coca-Cola. They have been the same general color all the time I have known them. I knew of these two [769] drinks, Sarsaparilla and Root Beer before I heard of Coca-Cola. They were the same color at that time as now.

Recross-examination.

I might classify Sarsaparilla as Cola drinks, I do not know as I would Root Beer. If a man came in and asked for a Dope I would give him anything that come handy. I do not know as I ever gave beer in response to orders for Dope or Sarsaparilla. When I was handling these other drinks and a man asked for a Koke or a Dope I would just give him anything, but prior to that time I gave him Coca-Cola.

Deposition of R. F. Zimmerman, for Defendants.

R. F. ZIMMERMAN.

Direct Examination.

Thirty-six years old; lived in Chattanooga since 1891; engaged in bottling business and a general line of soft drinks; have been engaged in that business six years the 28th day of next June, in this county. I bottle cola drinks and the name of my concern is the Union Bottling Company. When I first went

(Deposition of R. F. Zimmerman.)

in business I bottled a cola drink that I made myself, practically five years ago; I just didn't have any special name; the wagonmen called it Dope, generally in selling it to the trade they would halloa "Give me a case of Dope." We didn't have any name on it, just put a plain crown and no label whatever, in a black bottle, and called it Dope. We would throw it out if they called for Koke; we gave the same thing, Koke or Dope, and if they called for Coca-Cola, we did not have it, but gave them something similar to that. It compared with the color of Coca-Cola in that it was colored with burnt sugar, practically the same color; I could not distinguish one from the other, and the tastes were very much alike; the ingredients were almost the same as the original Coca-Cola of to-day. We put it up in black bottles.

Q. I show you a bottle marked Defendant's Exhibit No. 2 and ask if that is the same style bottle you put up your drink in, and which you have referred to?

The only difference is the crown, we had a plain crown on it instead [770] of the Tru-Cola crown. The shape, size, and general appearance of that bottle compared with the other bottles used in bottling other soft drinks are absolutely the same with the exception of the color. The color of the bottles I bottled the other drinks in are a sort of green, have a little green shade in some of them. That was the bottle that had been used prior to the time I got into the soft-drink business. I bottled Tru-Cola. I do not know what is in Tru-Cola, I buy the syrup from

the beverage company. There is a little difference in the after-taste from this other drink, but the trade has never noticed the difference. I have been bottling the drink in Exhibit No. 2 practically four years, also sarsaparilla and Root Beer. I used a different bottle, that is a patented bottle from the Hires Company for the Root Beer and sarsaparilla. I have known the drinks sarsaparilla and Root Beer since '91, twenty-five years ago or more. The color of root beer and sarsaparilla that I knew at that time compared with the color of this drink to-day is practically the same. They are all colored with burnt sugar coloring. The color of root beer is practically the same as that of Coca-Cola, or any cola beverage. Root beer looks about the same as sarsaparilla, but as a general thing sarsaparilla is a little bit darker. If Coca-Cola was in a bottle exactly like that I could not distinguish the difference. It is bottled in a bottle distinguished from any other bottle; there is only one bottle I have ever seen that looked like it. Coca-Cola has a different bottle to that, and it has Coca-Cola blown here, and it has a ring around the bottom here with the name of the bottling company around the bottom. I could not distinguished a glass of Coca-Cola by its color. Because there are plenty of drinks of the same color, so far as that goes; I could not say whether it was Coca-Cola or not, because it was colored that way. You can take water and color it with burnt sugar and you cannot tell it from Coca-Cola setting on the counter. As a general rule I could tell Coca-Cola

(Deposition of R. F. Zimmerman.)

from you might say ninety per cent of the drinks there is on the [771] market that I know of by its taste. I have known those other Cola drinks ever since I have been in business, since '91. When you come in contact with these cola drinks, so many, you cannot keep track of them. Drinks similar in taste, color and appearance to Coca-Cola that I know of on the market to-day are Lemon-Kola, this Ryeola, Roxie-Kola, Miola, Misti-Kola, Gayola, and then, Amori-Kola, of Americus, Georgia, and this other Mar-Cola, that is made in some place. I would have to sit down all day and think of them, it would be enough to mention all day long, and think of them. There is another one in town L'Aroma, that is a dope drink. I have known of them for six years anyhow, I have been connected with them. I have known of Cola drinks ever since I have been in Chattanooga, and practically before that, when I traveled for the brewery, I saw Cola drinks all over the country, scattered around, but I paid very little attention to them then, because I was selling beer. We get the syrup from the National Syrup Company, then we bottle it. It comes in a kind of reddish barrel, supposed to be red, I think. I have never seen a cola drink on the market that was not substantially the same color as Coca-Cola. They are all practically the same taste, unless a man, of course, that is in the business is making a study of it; he may probably distinguish the difference in it, but to the general public there is not one out of one hundred that if you put any cola out for him that would know whether it was Coca-Cola, or what it was.

(Deposition of R. F. Zimmerman.)

Cross-examination.

In 1891 I knew of Ryeola. I think that is one thing I would not like to swear to. As well as I can remember it was being bottled when I came here. I would not like to go back into 1891 because I did not pay any attention to the bottling business at that time. I cannot swear whether Coca-Cola was bottled here in 1891 or not. At the time I went into business six years ago I knew of Cola drinks. I won't swear that I knew of Cola drinks before that time; I did not [772] notice them except merely as a general passer-by along the street. I remember seeing Coca-Cola advertised prior to six years ago. All I would say I have seen has been the advertisements along the street. I was in the beer business prior to coming to Chattanooga. I lived in Cincinnati, Ohio. I was with the John Houck Beer Company. I have been with different concerns since coming to Chattanooga, was with the Chattanooga Brewing Company about five years. Some of the officials are Chas. Reif, Henry Brockhaus, Jr.; Mrs. Reif was the head of it when I came here, the old lady. She's dead. I do not know of anyone but Chas. Reif and Brockhaus. That would take me up to about 1896, after that Moerlein Brewing Company, after that I went to work for myself. I worked with the Moerlein Brewing Company from around Chattanooga up to the time I went into business for myself; prior to the time I went into the business I never gave the average cold drink any thought. I do not mean to testify to anything about

(Deposition of R. F. Zimmerman.)

what is called Cola drinks prior to six years ago. Have I seen big signs? No, I am not clear in my recollection about them; that is why I cannot testify about it positively. I have known Lemon-Cola not over a year. I have known of Ryeola ever since I went into the business, that was six years ago. The first time I saw Roxie-Cola was about three years ago, I guess. I have known Miola for probably three or four years. Misti-Cola about a year. Gayola about four years. Ameri-Cola probably six months or a year. Marcola hardly four or five months. Laroma I think it opened about September or October. I know a product sold around here by the name of Koke. I believe the first recollection I have of it was about the latter part of July, 1914. I saw an advertisement, the Southern Carbonator and Bottler, a monthly magazine published in Atlanta which goes to the bottling trade. About five years ago I put out a drink of my own and manufactured it under my own name. I did not advertise it any. We would go out to the negro stands as a general thing and they would call for a general mixture and we would just give them anything [773] on the wagon—if they asked for a lot of Dope that was the name it went by. I do not know if they used the name Koke at all. The first time I had my attention called to it was when they established a branch here. I may have heard that name before. The Central Koke Company established the branch here. There were some Chattanooga men interested in it. A few I knew were—Mike O'Grady

(Deposition of R. F. Zimmerman.)

and John Hiltz, and one of the Cummings boys, I think, was interested in it at one time, I am not positive. It don't seem to me as they used the word "koke" very much. Some coons are liable to give you any old name at all. I have heard the name Koke or Dope prior to the time I went into business. When I first came South was the first time I ever heard or knew of any Koke drink whatever in any way. Well, I have heard of them; when a man would say, "Give me a bottle of Koke or Dope," I guess I heard of them immediately after I came down here, I guess, because that was all I done, so far as I can recollect, and since I have been here I have heard those expressions. That was around 1891, from 1891 up to the present date.

Deposition of A. F. Ensinger, for Defendants.

A. F. ENSINGER.

Direct Examination.

Forty-seven years of age; at present live at Rossville, Georgia; that is near Chattanooga, Tennessee. I have lived there seven years now; before that I lived at 707 Bennett Avenue, Highland Park, Chattanooga, Tennessee. My business is bar-tender at the present time at the Eagles' Club; have been in that business about fourteen years. Prior to the time I was with the Eagles' Club, I worked at the Rose-Bud Saloon. I am about the bar so I can hear the names people use in asking for drinks they want. I dispense cola drinks. Some of the cola drinks I have dispensed are Coca-Cola, Koke, Ala-Cola, Tru-

(Deposition of A. F. Ensinger.)

Cola, Ozeola, Maud Muller; I do not know whether I can recall any others or not; there has been six or eight more I guess that during that time would come and go. I have known of other cola drinks on the market for fourteen years past. As compared with the color of Coca-Cola, they all look about the same. As compared with the taste of [774] Coca-Cola, I could not tell any difference. I dispense these drinks in bottles; the bottles of the different soft drinks I handle compare as to size, general appearance, etc., with the bottles in which Coca-Cola is put up, are all pretty much the same shaped bottle and color. Well, the cola drinks, the only bottles I have ever seen those in are those dark bottles, and the other soft drinks are a little lighter bottle. I would not know a bottle of Coca-Cola by its size, shape, color or general appearance unless I saw the name on it. The majority of bottles are all pretty much the same size, shape and color, and I could not distinguish them unless I had seen the name. I would not know a glass of Coca-Cola by its color. Those are all about the same color; I never could distinguish one from the other by the color of it, and they all taste pretty much alike; there is so little difference in it I could not distinguish them. I have calls at my place of business under the name of Dope. I generally give them a cola drink of that sort, whatever I have I give them. I do not know as they have made a specific request on me for Coca-Cola and nothing else. I never had any customers reject any cola drink served to him in response to a request

for a Dope other than Coca-Cola on the ground it was not what he asked for. I am still handling Coca-Cola. I regard Dope as a name for that class of drink and not as a specific name for Coca-Cola. I also dispense beer. There are numerous nicknames for it, such as suds, Dutch disturbance, and various other names. When a man comes in and asks for suds, or Dutch disturbance, I do not understand that he is asking for any specific brand of beer. I expect I have handled about all the different brands of beer there is in this market. With the exception of dark beers, the light beers, you cannot distinguish one from the other, hardly. It would be an easy proposition to serve a fellow with one brand of beer, if he asked for another one, if he were serving out of the keg. If a man is accustomed to drinking beer he may distinguish them. I would not know a Coca-Cola barrel if I saw it, unless it was labeled. [775] I used Coca-Cola barrels for about five or six years, and I did not see any difference in the barrel from that of any barrel, unless there was a label on it. I mean the entire make-up or anything of that sort. I could not tell any difference in the color; I have known other cola drinks similar to color, taste, and appearance to Coca-Cola, for eight or ten years. I have heard the word dope used long before I went into the bar-tending business, when I was still a baker. I understood the word dope to mean as applied to soft drinks, that they wanted a drink of that kind, a Cola drink. I did not know that they wanted any specific kind of drink. If a

(Deposition of A. F. Ensinger.)

man came into my place of business where I was serving beer and asked for "Bud," I don't know what he would mean by "Bud"; if I had Budweiser I expect I would give it to him. I started out in this life in the business of a baker. I have known this drink Coca-Cola fifteen years or better. I cannot recall what other drinks were on the market at that time—it is too far back. I have been trying to recall them for several days. There was one man here who made a drink almost that far back. I cannot recall the name. I know the drink was here, a drink similar to Coca-Cola. I do not remember the name or the man. The man who made it is down here in Trenton, Georgia, now, or he was there the last time I heard of him. I think Coca-Cola was on the market long before any of these other drinks. At the time I was a baker in the baking business I knew Coca-Cola. I expect I heard the word dope before these other drinks were on the market. It has been something like two years since the first time I heard the word Koke. It was in Chattanooga. I have been serving it for two years about; I get it from Chattanooga Bottling Works. I do not know where the first came from; I bought it off the wagon here in Chattanooga. I heard of Koke before that time. I have heard of this product Ala-Kola a number of years. Tru-Cola has been on the market quite a while, about the same length of time as Ala-Kola. Have known Wis-Ola some time back, and Maud Muller, three or four [776] years, I expect. At the Stag Hotel when a person asked for Dope or

(Deposition of A. F. Ensinger.)

Koke I had no doubt about what they wanted because I had only one thing to give them. It was Koke or Dope.

Deposition of Tom Collins, for Defendants.

TOM COLLINS.

Direct Examination.

Fifty-one years old; live out on Kirby Avenue, Chattanooga, Tenn. Have lived in Chattanooga twenty-eight years. Business is steward at the Eagles Club; have been steward there three years. I dispense soft drinks in bottles. Some soft drinks we have are white soda-water, Koke, Coca-Cola, Poinsetta; I think that is about all. I know of Ala-Cola and this Maud Muller but we do not handle them any more. I have known of soft cola drinks on the market five or six years. The color of these cola drinks are the same as the color of Coca-Cola. I have seen the cola drinks I spoke of in bottles. I never noticed much about them, but it seems they all look about the same to me, in the same or near the same kind of bottle, as compared to Coca-Cola. I could not tell any difference much in the taste either. I have been handling this product Koke, I think, about a year. I have known of the product Root Beer and Sarsaparilla ever since I have been here in Chattanooga, about twenty-eight years. The color of Root Beer and sarsaparilla is about the same as Coca-Cola. Root Beer and Sarsaparilla has the same general color. If I saw a bottle of Coca-Cola setting on the counter, from the size of the bottle,

(Deposition of Tom Collins.)

color, shape and general appearance of the bottle, I could not tell whether or not it was a bottle of Coca-Cola or a bottle containing some other cola beverage. The bottles look about the same to me, that is, the Coca-Cola bottles and the cola bottles. Customers come in and ask for Dope. Of course they call all of them Dope, some of them do. I just ask what kind they want. Some say, "Give me a soda-water," others say "Sarsaparilla," and some says Koke, others say Coca-Cola, and others say they don't care what it is, and when they say they don't care, I go ahead and dab up anything that is closest, and if I get what they want, I let them have it, Coca-Cola, Koke, whatever it may be, or white soda. When a customer comes in *and* [777] *I* do not understand that he has made a specific and definite request for Coca-Cola only. Lots of times they come in and say give them a Dope. I ask them what kind. I know soft drinks of some kind is what they want. I will generally ask, you know, and some call for soda-water, some for Koke, some for Coca-Cola; that is the way you go. In dispensing, when I have had customers ask for a Dope, and have dispensed to them a Cola beverage other than Coca-Cola, I have never had that beverage rejected on the ground it was not what they asked for. I would not know a Coca-Cola barrel if I saw one, or the color of a Coca-Cola barrel. I have known of other drinks on the market similar in taste and appearance to Coca-Cola, I suppose, for ten years. Some of the drinks of that kind are Star-Cola that tastes

(Deposition of Tom Collins.)

like it. I could hardly tell the difference. This Maud Muller tastes a good deal like it, that they used to have here, that is, to my taste it did. When a man comes in I ask him what kind of Dope he wants. Sometimes he says Koke and other times Coca-Cola. We handled that Ala-Cola, and Maud Muller, they called Ala-Cola Dope too. I never had Ala-Cola rejected by any of my customers when asked for by the name of Dope on the ground it was not what they asked for. I have been steward of the Eagles Club three years; prior to that time I had a soft-drink stand out on Market Street, a near-beer stand. I was there about three years; prior to that time I worked for Stanley and Bogleshat; they were running a saloon then; that was before prohibition. I was with them about three years and a half. Prior to that time I had a place of my own on Market Street for eleven years. I dispensed this drink Maud Muller in the Eagles Club. I never dispensed it before that. I think it came on when I was up at the Eagles Club, I am not sure. I dispensed Ala-Cola up at the Eagles Club and I think at no other place. I think that came out while I was there; that was the first I ever heard of it. I have been handling Koke about a year only at the Eagles Club. I never heard that word Koke used before, or I don't remember it while in the saloon business with [778] Stanley and Bogenshat. We did not have any other drink of that name, class or kind, similar to Coca-Cola. I have calls for Dope, and I give them soft drinks of any kind or character, and

(Deposition of Tom Collins.)

I would always ask what they wanted; some would say "Give me white soda," others would say "Sarsaparilla" and some Coca-Cola. I never give them anything unless I ask what they want. I never heard this word Koke used prior to the time I commenced handling Koke. When I served soft drinks, I served them from the bottles at the various places I worked.

Deposition of Joe Quinn, for Defendants.

JOE QUINN.

Direct Examination.

Forty years old. Live 803 Vance Avenue, Chattanooga, Tennessee. Have lived here about five years. Before I came here I lived in Nashville, I am now engaged in the near-beer business. Have been in that business about fifteen or eighteen years, five years in Chattanoogo. We handle Koke, White Soda, Poinsetta, and Sinalco and this Panpepsin, we have that too. We get Koke from the Chattanooga Bottling Company. Ala-Cola we handled that, other cola drinks I handled besides that were Star-Cola, Mi-Cola and the stuff made by Mayfield, and had some made by Gerst—I forgot the name of it. I have known of Tru-Cola, and other cola products on the market similar to Coca-Cola, for ten or twelve years. There is no difference in the color of them compared with the color of Coca-Cola. They may all have a different taste but I do not see any difference to amount to anything, the same general taste. All the different drinks I have handled and know of

(Deposition of Joe Quinn.)

have been bottled. The bottles all look the same, I do not know that I could tell one from the other. I could not distinguish a bottle of Coca-Cola without the crown on it. I could not distinguish a glass of cola-cola by its color. I could not tell one from the other, both have the same color—a dark sort of color. I have handled Root Beer and Sarsaparilla, have known these two drinks all my life, I guess them two drinks have been on the market twenty years. Sarsaparilla is darker than Root Beer or [779] Coca-Cola. They all have that dark color. I should say between a brownish and a black color. All of it, root beer, sarsaparilla and all of them cola dopes, one is the same as another. I cannot distinguish a glass of Coca-Cola from a glass of Root Beer by the color. I guess Sarsaparilla is a little darker, that is all, but I can distinguish them by the taste. I do not know how long I have known Tru-Cola, I think now that is put up by Diehl, of Nashville, when I knew it. Deihl had one, and Gerst had one, when I was living there. Gerst was just about getting in the soda-water business about seven years ago, to the best of my knowledge, and Deihl has been in it about thirty years, I guess. I have known of the drink Diehl had on the market, I guess, fifteen or twenty years—let me see—I think they changed off and commenced using Mayfield's syrup, they claimed—I do not know what kind of a syrup. There was a drink named Ala-Cola that I was familiar with. A man by the name of Bowman had a stock company on Cherry Street, they were using Mayfield's stuff

(Deposition of Joe Quinn.)

in it. I have handled Coca-Cola up until about two and a half or three years ago. I am not handling it now. I quit handling it because this gentleman refused to sell me. (Indicating Mr. Cunningham, who was representing the Coca-Cola Company.) I do not know what position he holds, he was on the wagon and refused to sell to me. I started in handling Ala-Cola, and he said I should not handle both. He was on the Coca-Cola wagon, there was a negro driver, this gentleman was the salesman. That was two years and a half ago. I have had customers ask for dope every month while I was in it. When they come in and ask for Dope they want any kind of soft stuff. They come in and ask for Koke, and I give them Koke, but lots of them come in and say "Give me Coca-Cola," and I tell them I do not have it. At other times I will turn around and tell them that I have this Koke, and I will give you Koke, and if you do not like it you do not pay for it—I mean Ala-Cola —I tell them this is Ala-Cola and if you do not like it you do not have to pay for it." [780] One or two customers objected to any cola drink when they asked for Koke on the ground it was not what they asked for. I told them I do not handle Coca-Cola, I do not take your money if it is not what you want. Lets take a cigar, they sometimes say. It was well known that we did not handle Coca-Cola and still they asked for Dope and Koke. I would sell them the Chattanooga Bottling Company's Koke when they asked for Koke. I have heard the name dope as applied to soft drinks for seven or eight or ten years, as long

(Deposition of Joe Quinn.)

as I have been working around the business. In Nashville when they asked for Dope I gave them what we had in the house, if we had anything to give them; if I had Coca-Cola, I gave them that. If we had Koke—I did not have Koke, but if I had Gayola, I gave them that. When a customer comes in and asks for a Dope, I understand he had made a request for what I have in that line, I do not regard the word dope as a specific and definite nickname for Coca-Cola, no more than one of the others. I understand when customers ask for a Dope, they want anything we have got in that line. All of it is Dope to me, I do not know one from the other. I do not know, I guess they call that Koke Dope, I guess they call Coca-Cola Dope, and they call Ala-Cola—whatever we have got in that line, they call all of it Dope. Recently trade has been very strong for Koke—I have got them to call for the Chattanooga Koke. I have never seen a cola drink that was not substantially similar in color to Coca-Cola. I do not know about the taste; the color is all the same. Some might be put up in lighter amber bottles than the other. I have seen them, in fact, pick up either one of the bottles and they might not know one from the other without the stamp in here. The color of the Coca-Cola bottle handled by me in Chattanooga is black amber bottles, they use the same thing to-day. Of course, all use the same bottle, if I am not mistaken about it, I know they are. I have seen advertisements of the product Koke in Chattanooga. They brought around to me a few little hangers, with

(Deposition of Joe Quinn.)

something like Koke on them, when they first started out with it, but did not hang them up. [781]

Cross-examination.

Lemon Soda is not known as Dope. Sarsaparilla is not known as Dope. Root Beer is known as Root Beer. Panpepsin is not known as Dope, neither is Poinsetta or Sinalco. I do not know when I first heard of Koke. I have been in the business, well, fifteen or twenty years. I have not heard of Koke but since the Chattanooga Bottling Company started up. Before that I heard the name "Koke"—everywhere, anybody, everywhere, they call and say, "Give me a Koke." I guess they mean to give them the drink by the name Koke. Diehl's drink has been out, I guess, about ten years. It was a cola, Diehl's Star-Cola, I think. I do not remember the name. Gerst's cola has been out about seven years, I think, I had been over here about a year and a half before I heard of his soft drink. Since this Koke has been out, and a man comes in and asks for a Koke, I give him Koke, and if he specifies Coca-Cola I tell him I do not handle it. I do not know how long this product Ala-Cola has been out, between two and two and one-half years is my best knowledge. Gerst's cola has been on the market about six and a half years, at least about that length of time. I knew of other colas out before that, seven, eight or ten years, I do not know exactly how long. Koke, Coca-Cola, Gayola, Diehl's product and Gerst's product, those are the only ones I know of in all the places I have been working around over there. I have known of Coca-Cola

(Deposition of Joe Quinn.)

about the same length of time, ever since I have been in business, about fifteen years. When we handled it we had nothing but Coca-Cola, until Ala-Cola, to my recollection, about two and a half years ago. That was the only drink that—there was one drink called Dope, in town, and then Ala-Cola, and Harry Reed started and this man come along and told me I could not sell it. I told him there were his empties. When I handled Coca-Cola by itself, and a man asked for Dope, I gave him Coca-Cola, that was the only thing I had. Those little hangers that were given to me I think they were Koke, when I first started with Ala-Cola, the Ala-Cola people put out signs. When this drink Koke was first brought out, they gave me a few little hangers to hang up, but I did not hang them up. I do not have one of those signs. [782] If I remember the sign, it had red letters, Koke.

Exhibit I, is not it. I think it had the same type as the crown. When I served these drinks over the bar I pulled the crown off and set the bottle up on the bar with a glass. I threw the crown away sometimes, depended on how busy I was. Some consumers saw the crown and some did not. I think, if I am not mistaken, the Ala-Cola used a bottle that was blown, they could see it, there was no label on the bottle. No one uses labels that I know of. I told Cunningham to go and take his empties. Near-beer business is a saloon. It is supposed to be a weak stuff, you call it near-beer now and you will have the right name for it.

Deposition of F. E. Hooper, for Defendants.

F. E. HOOPER.

Direct Examination.

Fifty-seven years of age. Live 411 West Seventh Street, Chattanooga, Tennessee. Have lived here since November, 1883. Engaged in the retail grocery business. Business located 415 West Seventh Street, Chattanooga, Tennessee. I handle soft drinks. I handle most all the drinks that have been put on the market here for several years; I could not name the names of them. I do not remember them. I have handled cola drinks, I have handled Coca-Cola, I have handled Koke—I handle Koke, now, Digestol, and most all, I buy from all the wagons that go around town. I handled at one time Coca-Cola but quit handling it. Well, I bought some Koke from a neighbor that was an agent for Koke, and the driver come around and told me if I handled it they could not serve me any Coca-Cola. He said, if you handle Koke we cannot leave any Coca-Cola here. We cannot place Coca-Cola where there is any Koke. These cola drinks are pretty much the same color as Coca-Cola, all in dark bottles, and look alike. Some two or three drinks are pretty nearly exactly like Coca-Cola. I have never tasted any that tasted like Coca-Cola except Koke. Koke and Coca-Kola are the same in my judgment. They are dark bottles, pretty near the same size, and pretty nearly the same as Coca-Cola bottles. Koke bottles are almost exactly like Coca-Cola bottles; [783] only not the same

(Deposition of F. E. Hooper.)

printing on them, you know. I have had people come into my store and ask for Dope. When they ask for Dope, I say "What kind of Dope." I do not understand they are asking for any particular brand of drink when asking for a Dope. I do not regard that name as a specific and definite name for Coca-Cola. I handled Coca-Cola and Koke both for two or three weeks before they caught the Koke in the house, and when they asked for a Koke or a Dope, I asked what kind they wanted. They would designate themselves what kind they wanted, whether Koke or Coca-Cola. Some of the other people in town were handling Koke, and told me if I was handling Koke they would not let me have Coca-Cola; I wanted to handle both. I am buying Koke now. I said I would put the Koke in my house and try it out for a while before I let them know. I wanted to see if it would do as good as Coca-Cola and I found it went as good as Coca-Cola. He came in one day and found Koke in my ice-box. He said, "I see you have Koke in there." I said, "Yes, sir." He said, "We cannot leave any more Coca-Cola if you handle Koke." I said, "All right, go ahead with your Coca-Cola." I got Koke from the Chattanooga Bottling Company. When the people say they want Dope or Koke, I say, "What kind do you want?" Very often they will tell me they want soda-pop, sometimes Dope, sometimes Coca-Cola, but after I got to handling Koke, they said Koke sometimes.

Cross-examination.

I have known Coca-Cola ever since it was made

(Deposition of F. E. Hooper.)

and brought into Chattanooga. It was between twenty-five and thirty years, I reckon. I commenced handling it when it was first put on the market. We had Root Beer and stuff like that then. This drink Koke, I think it started about a year ago. There was a time when I was handling Coca-Cola and not any other drink of that kind. When they asked for a Dope or Koke then, I would ask what they wanted, they would say whatever they wanted. If they wanted a Coca-Cola, or a Root Beer, or anything else I gave it to them, whatever they wanted. If they [784] wanted a Coca-Cola, or a Root Beer, or anything else, I give it to them. There were two or three drinks that I handled at that time in dark bottles. Koke and Dope applied in my opinion to all drinks, to sarsaparilla and Root Beer, any dark drink, Dope or Koke applied to. I only sold the drink in bottles. Root Beer has been on the market a great many years, and the others have all been on since Coca-Cola. Coca-Cola is the oldest Dope or Koke I remember.

Deposition of M. J. Costello, for Defendants.

M. J. COSTELLO.

Direct Examination.

Thirty-six years of age. Live at 801 East End Avenue, Chattanooga, Tennessee. Engaged in nothing at all at present. Last Saturday night I was working at 9th and Cherry Streets at a near-beer stand. I have been engaged in that business six years, since the town went dry, but I have been in the whis-

(Deposition of M. J. Costello.)

key business for ten years before the town went dry. Ten years back I was a bar-tender, and also handled soft drinks. I have been handling soft drinks for ten years. Bottled goods, soft drinks, I have handled White Soda, Digestol, Sinalco, Ginger-Ale, Ala-Cola, Tru-Cola, Koke, Ryeola. The Coca-Cola drinks, Ala-Cola, Tru-Cola, and Coca-Cola, seem to me to all have about the same color. I never drank any of them. I sometimes used them for a chaser. All cola drinks I have known of have been put up in bottles. The shape, size and general design and appearance of the bottles of these other cola drinks compare with the bottles of Coca-Cola pretty much alike, there is very little difference in any of them. If there is, I have not noticed it. I have not given particular attention to any of them. I could not distinguish a bottle of Coca-Cola from these other drinks unless I saw the *corn* or name blown in the side of the bottle. I could not distinguish a bottle of Coca-Cola by its color, by the color of the drink inside of it. I do not think I would know a barrel of Coca-Cola if I saw it. I do not know the color of the Coca-Cola barrel. I have not noticed barrels of Coca-Cola setting on the sidewalk in front of soda stands around town, I may have saw it, but never paid any attention to it. I have had customers come into my establishment [785] and ask for Dope quite frequently. The last place I worked at did not handle anything else but Koke and Tru-Cola, White Soda and such, and it did not handle Coca-Cola. I give the first thing I get my hands on. It don't make any

(Deposition of M. J. Costello.)

difference. What the customer wanted when he asked for Dope was a soft drink, some kind of Koke, unless they specify what they want I give them the first I come to. You see the profits are about the same, and I just grab the first one I get my hand on. When a man comes into my establishment and asks for a Dope, I do not understand he is making a specific and definite request for Coca-Cola. I think if he wanted Coca-Cola and nothing else he would call for Coca-Cola. Other names customers use in asking for cola drinks, are, give me a Koke, a Dope, a shot, or something like that. When they used them while we were bootlegging, I knew they wanted whisky, but since, I know they want a soft drink. If they say give me a shot, I would give them a Tru-Cola or Koke. If I had Coca-Cola I would give them that, or whatever I got my hands on. Every day several ask for Coca-Cola and I tell them I do not have it and they will take what I have. Some few walk out. If he wants a Koke or a Dope. I suggest that he wants a Koke or a Dope, that is about all alike, and I suggest that to him. I do not know. I have on several occasions, gone to a drug-store, and said, "Give me a Koke," I would not know what he gave me. I would not know any difference. When I went to a soda-fountain and asked for a Dope, I expected to get what he had in that line, whatever it was. No particular brand. I regard Koke and Dope nicknames for cola drinks, as a class. I have handled Coca-Cola, last Fall I handled it up to last February. You will have to ask my bar-tender why

(Deposition of M. J. Costello.)

I quit handling it, I was not present when it occurred. I was serving my sentence for selling whisky. They claimed he was short on bottles, or something or other, but anyway, he refused to buy Coca-Cola because we had Ala-Cola, but just the reason I do not know. I have never seen a cola drink not the same general color as Coca-Cola. They are all pretty much the same color. If some one set them out for me I [786] might not know whether it was Koke or Tru-Cola or Coca-Cola; I do not think I could tell the difference myself. I have had this little experience, I will state that when this Koke first come out I got to talking about it. I am not sure about that, I think it was Jim Williams, he is dead, and I hate to bring up a statement of a dead man, I switched glasses, and set them up in front of the wrong bottles to see if he could tell. I knew, I had them marked, and he picked up the Koke and said that was the Coca-Cola and tested both out and set the Koke out for the Coca-Cola. I can prove that by good witnesses, to that effect. He took the Koke for the Coca-Cola. It was not a sale, understand, it was mostly a joke, to see if he could tell.

Cross-examination.

Koke came out, I suppose, about a year ago, that is when I first hear of it. When I was proprietor, I always tried to divide the stuff up among the boys the best I could, they are all good boys on the wagon, if I could handle the stuff and there was any demand at all for the stuff, any way to use it, I divided it the best way I could, Tru-Cola, Ala-Cola, Coca-Cola and

(Deposition of M. J. Costello.)

the others. Koke and Dope both applied to any kind of cola drink. I never did handle Coca-Cola exclusively at all. I have been a bar-tender about ten years and during that time I have been handling soft drinks. I knew of cola drinks for five or six years. I have not handled Coca-Cola lately, I have handled it during the last ten years, but about six years is as far back as I can refer to handling any certain beverage. Ten years they would come in and call for a "koke" or a "Dope" and they would use the same dope. It has always been customary, I would give them first one thing and then another. The bottled Koke cost me seventy cents a case. Ala-Cola sixty cents. Tru-Cola sixty cents. Coca-Cola seventy cents.

Deposition of A. W. Stanley, for Defendants.

A. W. STANLEY.

Direct Examination.

Fifty-eight years of age. Live in Chattanooga, Tennessee. I am in the hotel business. I have had a saloon until they closed it up. [787] I had a saloon for about thirty years in Chattanooga, Tennessee. I dispense soft drinks. I am about the bar and can hear the requests my customers make for the different drinks they want. I tended bar for twenty years. We handled Maud Muller, Sinalco and used to handle Coca-Cola until we got to handling Koke. Henry Boerger used to put up a drink I used to handle. They claimed it would take the place of Koke—Coca-Cola, I have forgotten the name of it.

(Deposition A. W. Stanley.)

I do not remember the drinks on the market similar to Coca-Cola; ten or twelve years ago, I never give it a thought, you know. The color of those drinks compared with Coca-Cola, some of them, now this drink I was trying to think of the name of, that Henry Boerger got out, his was one of those cola drinks, Maud Muller is about the color of it, I think it is, I never drink anything but whiskey, I may have tasted it, but I don't remember it. I have handled Tru-Cola and Ala-Cola. They were all about the same color as Coca-Cola, that they tried to make them so there would be competition or they would take the place of coca-cola. These drinks were put up in bottles, they were all about the same, all black bottles. I cannot distinguish a Coca-Cola bottle from a bottle of these other cola drinks that I know of, unless I saw more than that, the name blown in the glass. I could not distinguish a bottle of Coca-Cola by the color of the drink from these other drinks. I have handled Sarsaparilla and Root Beer. How long I could not tell, it has been a great many years, though, Sarsaparilla. The color of those drinks compared with the color of Coca-Cola, I guess about the same color, dark. I have never seen a cola drink that was not substantially the same color as Coca-Cola. My recollection is that they are all about the same kind of bottle. I have noticed Coca-Cola barrels sitting out in front of drug-stores around town. I used to buy Koke by the barrel, Coca-Cola, I mean. I did not dispense in a soda-fountain. I do not know as I could tell a Coca-Cola barrel if I saw it, because a

(Deposition A. W. Stanley.)

great many other barrels are the same color, I reckon. Catawba wine, we used to get Catawaba wine in red barrels, painted red, you know. I have had customers come into my establishment and ask for a Dope. I asked what kind of a dope they wanted, some would say Coca-Cola, and [788] some would say "Give me some of that new drink of Reif's, that Maud Muller," and such things like that, you know. If he would say a dope, of course, before Koke or any other drink was introduced, come in, and we only had Coca-Cola, I would understand he wanted Coca-Cola. Lots of fellows would come in and say, "Give me a dope." I would say, "What kind of dope do you want?" and he would say, "Give me Coca-Cola, or give me something else." You know sometimes they call Coca-Cola dope, you know how these fellows are. Customers ask for cola drinks by saying, "Give me a shot at cocaine." If they ask me to give them a shot of cocaine, Coca-Cola is, I suppose, what they want. A great many people think Coca-Cola has cocaine in it, you know. I have heard people argue that. I do not know why they thought it.

Deposition of Burton Jones, for Defendants.

BURTON JONES.

Direct Examination.

Thirty-seven years of age. Live at St. Elmo, Tennessee, a suburb of Chattanooga; have lived there about seven or eight years; am engaged in the drug business right at the foot of the mountain, St. Elmo. I have a soda-fountain in my establishment. We

(Deposition of Burton Jones.)

dispense all the common drinks on the market to-day. I dispense cola drinks. Coca-Cola and Tru-Cola, the latter about three years. The color of Tru-Cola syrup is a brown liquid about the same as Coca-Cola. I could not distinguish the difference in color between the Tru-Cola syrup and Coca-Cola syrup. I could not distinguish the difference in color between the finished drinks as served at the fountain, and Coca-Cola. I could not distinguish the difference in taste between Tru-Cola and Coca-Cola. We get Tru-Cola in a red barrel, the syrup comes in red barrels. I have had calls for dope at my establishment, when a customer asks for dope, he wants a cola drink of some kind. There are so many substitutes on the market, they might want a cola drink. I do not know about that, I would not say positively they would want a cola drink, or want one of the same articles. I would not say what he would want. We have had circulars from a lot of people wanting to sell us some other cola drinks; Koke, Dope, Star-Cola, [789] Afri-Cola, and there may be more, just circulars. When customers come to my store and ask for "a dope," we serve Coca-Cola, we have nothing else in the house but Coca-Cola. At the time we had Tru-Cola we usually gave Tru-Cola. They were satisfied with it, anyway I gave them the dope. None of them ever refused Tru-Cola on the ground that it was not what they asked for. I had a call from an agent of the Coca-Cola Company about a year ago. He came in, I believe about the first thing he said he wanted to see the manager, and they sent him back to me. I was at

(Deposition of Burton Jones.)

the desk at the time. He introduced himself. At the time I do not believe I remembered his name right now, but he came back and said he was the representative, legal representative, of the Coca-Cola Company, of Atlanta, Georgia, and that he wanted to have a little talk with me on Coca-Cola business. And he says, "Now, we have been understanding that you have been serving a substitute for Coca-Cola." I said, "Well, we have been serving Tru-Cola here a part of the time, that is a fact, we have," and then along with the conversation he told me that we had probably violated the law. I did not know. I did not know the seriousness of what we were doing, something like that, and that there had been cases where certain people, I believe in Savannah, I won't say positively, had been put out of business for handling others. I said, "If we don't do it, we would sure like to know how they could put us out of business"? That was about the gist of it. I do not know that he said he would sue me, but he made it such a strong feature, that that was their intention to make people go to handling the genuine Coca-Cola, handling Coca-Cola exclusively, for they come to get me to sign up this. The gentleman wrote out quite an article there that I signed, but I do not remember all that was in it. Just covering about what I have said, about as near as I can repeat, about what I have said that we would not handle anything else besides Coca-Cola hereafter, that was the trend of the whole thing. I signed it sorter not knowing what else to do. I did not hardly have time to think what I was doing. I

(Deposition of Burton Jones.)

[790] guess we talked there about an hour one afternoon, probably no more; of course I was up occasionally waiting on the trade. What I understood—it was a case of kinder making me think I was going to get into trouble if I did not quit. I signed the contract to avoid getting into trouble with the Coca-Cola Company. I did not want to get into trouble with anybody at all. He intimated to me that I would get into trouble if I did not sign the contract, that was the way I understood it, that way, that we were going to get into trouble if we did not quit selling Tru-Cola and other cola drinks; that is, if we should substitute for Coca-Cola. He said that he had some evidence that we had at certain times served off a substitute, I don't believe I know the exact words, for Coca-Cola here on a certain date, somebody called for Coca-Cola, and they got the other article. I told him I did not know for certain, that is what I remember. I said, "I don't remember for certain about that, now," for the reason I do not believe we had any of the substitutes in the house at the time, but I investigated and the gentleman called for the genuine Coca-Cola, for we never had the other stuff in the house at the time he was making his inspection trip, for we had gotten out of it, and had moved into the other house, and in order to keep from having so many barrels and such as that, we kept handling Tru-Cola, and we never had the other on hand at all. The circumstances were about those. We were in an old building which was about to fall down, and we moved down to another building to put up a new building,

(Deposition of Burton Jones.)

and while we were down there, we got out of the Tru-Cola, consequently we never bought any more of the Tru-Cola. We did not have room down there, that was it, and the gentleman got the genuine Coca-Cola when he called for it, for I looked that up after he left. I believe you were the gentleman who called on me (indicating Mr. H. B. Pierce).

Mr. PIERCE.—Yes, sir; I was the gentleman.

Yes, sir; that is the gentleman who called on me over there. We have never intended to ever substitute for we had both in the house all [790½] the time, both Tru-Cola and Coco-Cola. The Tru-Cola cost us less than Coca-Cola. It gave satisfaction; I never had any trouble, nobody refused it that I remember of. Mr. Pierce did not tell me what kind of agent that was, or person that was, that called, but he gave me the dates and certain times, and I was not in the store on those dates and at those times and did not know anything about it, and I inquired of the men and boys in the store about that date, if such and such a thing happened and they said, "Yes, that they remembered it very well, and I remember that they said a Mr. Smith was out there, but they had his name wrong in the store, and I asked every one in the house and found about that later who it was that let him have it, and he was just working here for a short while, I mean he had not been working there very long, I mean, this clerk. When customers came in and asked for a dope, to be plain, I do not know whether they were wanting Coca-Cola, or a cola drink, or what, and I began asking around about that, and

(Deposition of Burton Jones.)
they said, "Well, I guess there is more substituting and more drinks than there is of Coca-Cola sold on the market to-day." I mean that was it, and I was in the crowd with the balance of them, that was all there was to it. It was never our object to substitute for Coca-Cola any more than we would drugs, or anything like that, for the reason that we kept both of them. We quit handling Tru-Cola because of fear of consequences intimated to us by Mr. Pierce. I talked it over with my partners; we got sorter mad when Mr. Pierce came and said and they said, "I would not let him talk to me that way." Well, he made me mad. He said "A man talking to me that way, I would run him out of here," something like that. I said, "Let's talk this thing over." I have tried to keep my head and try to reason the thing out, would it pay us to get into any kind of lawsuit, even if we won, I said that to my partners, would it pay us to get into a lawsuit with the Coca-Cola Company even if we should win? I said, "I do not want to get into any trouble." I said, "I called up Mr. Connor in Alton Park, and I said Mr. Connor, have you [791] got Tru-Cola"? He said, "Yes, I have got Tru-Cola," and I said to Mr. Pierce at the time, I said, "How about what we have got on hand, how about letting it go on as Dope or something like that?" He said, "Go ahead and get rid of it as you have been doing and let that go." I never used dispensing bottles. I had those in spigots. Only occasionally we may have one for some new drink, but we have a reseptacle for it in the soda-fountain. We

(Deposition of Burton Jones.)

had Coca-Cola and Tru-Cola in different containers, one on each side of the fountain.

Cross-examination.

Mr. Pierce conveyed the idea to me that somebody there had been substituting for Coca-Cola. He told me that it had been done. We handled Tru-Cola. It seems to me like it was three years prior to the time Mr. Pierce paid me the visit. When a man came into our place of business and asked for a Koke or a Dope prior to the three years we handled Tru-Cola, we would give him Coca-Cola to drink, and when we put that Tru-Cola in, when he called for a dope or such as that, we gave him this Tru-Cola. Prior to that time I was new in the business and understood that he wanted Coca-Cola. We have had calls for Tru-Cola at our fountain under the name of Tru-Cola. I think we have, as near as I can remember. I do not know for certain about that, for there were a plenty of people who knew about this other drink, and probably at some time they might have called for it. I would not say.

Q. 82. Did you sign this statement: "During the short time we have handled Tru-Cola, we never had a call at our fountain for "Tru-Cola" under its proper name of "Tru-Cola"; at least we have never had any number of calls for Tru-Cola that would be noticeable, and I do not believe that under past and present conditions that we could sell a gallon of Tru-Cola syrup through our fountain in a year's time under its proper name of "Tru-Cola"?

A. I might have signed it, I do not remember.

(Deposition of Burton Jones.)

There are people that do call for Tru-Cola that knew of this other drink. What you [792] read is a pretty fair statement When we first put in Tru-Cola and a person came to our place of business and asked for Koke or a dope we gave him Tru-Cola. We started immediately giving Tru-Cola made here in Chattanooga; I suppose, if a man noticed anything about it, I think probably we might make the statement, well, you cannot tell the difference so far as that is concerned, we might have made such a statement as that. Up to the time we put in Tru-Cola when people asked for a koke or a dope they wanted a cola drink. I suppose, Coca-Cola. So far as we know at our place of business, this Tru-Cola was never substituted for Coca-Cola, or put out under the name of Coca-Cola. I do not know what they meant by Koke or Dope. We could not tell. Before we put in Tru-Cola, we gave Coca-Cola. Had nothing else to give them. I suppose very few knew that we had such a drink as Tru-Cola. Tru-Cola cost a dollar a gallon. Coca-Cola cost an average of one dollar fifty, or one fifty-five. It was our instructions to always serve Coca-Cola when called for. We gave those instructions when we put in two similar drinks. We wanted to keep them separated and not to get them mixed up. They were similar drinks, and it was not our intention to substitute, it was not our intention to substitute in that way. I have been in the drug business about seven years, I believe, a little over. Up to the time I started handling Tru-Cola three years before January 8, 1914, I only handled

(Deposition of Burton Jones.)

Coca-Cola and nothing else of that kind. Northern people come in there and say, "Give me a dope," and, naturally, we give them a cola drink, but they say that is not what they want, but that is up North. We have a great many tourists that call ice-cream soda 'dope," that is what they call it. Up to the time we put in Tru-Cola we served Coca-Cola for koke or dope, that is what we understood it to be. I served them only koke or dope I had prior to the time I put in Tru-Cola. And then when I got two kinds I served first one and then the other. If I had had any other cola drink on hand besides Coca-Cola before I began handling Tru-Cola, I suppose we would have done the same as I did do when I handled both. You see I had both, and after I began handling Tru-Cola, I had both. **[793]**

Recross-examination.

At first when handling Coca-Cola, if men asked for a Koke or a Dope I gave them Coca-Cola, and after I put in Tru-Cola and a man asked for Koke or Dope I gave him Tru-Cola. I changed because there was fifty cents difference in the price of the syrup.

Redirect Examination.

I handled cigars also, and have customers come in and say, "Give me a cigar." If he does not point out some particular brand he wants, I usually give him a bunch of cigars made here in Chattanooga that costs us $31.00 or $32.00. I also handle Hires Root Beer; it is dark brown, nearly the same color as Coca-Cola.

Deposition of R. L. Wayman, for Defendants.

R. L. WAYMAN.

Direct Examination.

Forty-eight years of age, live in St. Elmo, on Fourth Street, Chattanooga, Tennessee. Have lived in Chattanooga, Tennessee, about twenty-four years. I have been engaged in the near-beer business a little over six years. I handle soft drinks in connection with my business, some of them being, Tru-Cola, White Soda, Red Soda, Maud Muller, Poinsetta, Sinalco, Koke, Dope—they call it Dope. Other cola drinks I have known of are Ala-Cola. I have known of these other Cola drinks ever since I have been in business since they have been out, except Koke, and that has been out about a year, that is in Chattanooga. All I know of it the color of these different cola drinks compared with the color of Coca-Cola is about the same, I think; I never paid any attention. I don't think I could tell a glass of Coca-Cola from these other drinks by the color of it. There is some little difference in the taste; of course, I am not a Coca-Cola drinker. I do not suppose I have drank four bottles in my life, or of the other stuff either. They tell me a Coca-Cola drinker can tell the difference in a second. They have the same general taste, along the same general lines. These other cola drinks are put up in bottles. Coca-Cola bottles are a little different to some of the other bottles. Some difference in size, a little difference in shape, but the bottle [794] is about the same kind. I have customers come in and ask for Dope.

(Deposition of R. L. Wayman.)

I give them, when they ask for Dope, Dope, Koke, Tru-Cola, Ala-Cola, something like that. When customers ask for Dope they want some sort of soft drinks. They would ask for Coca-Cola if they wanted it. I have had people call for Coca-Cola, and I told them I did not have it, and they would say, "Give me something else." I have not handled Coca-Cola for many years. If a customer comes into my establishment and asked me for a dope, I do not consider that he had made a definite and specific request on me for Coca-Cola, and nothing else, they call all these soft drinks Dope. I never had any customers refuse any other cola drink on the ground it was not what he asked for, when he asked for a dope or a koke and some other drink besides Coca-Cola was served that I can recall. He can tell whether or not he is getting that or Coca-Cola. The Coca-Cola bottles here all have the name on them, blown in the glass, and the other bottles have not. One says Union Bottling Company, and the other says Chattanooga Bottling Company, and the Ala-Cola, of course, that is not out, I do not believe, but they had a bottle similar to the Coca-Cola bottle, I think their's was blown in the bottle, but the other people, Chattanooga Bottling Company, their stuff has a great round lettering blown in the glass, also. I have had customers who came in and asked for Dope and knew that they were not getting Coca-Cola, and who seemed to be satisfied with what they got. Cola drinks are the same general color as Coca-Cola, about the same, very little difference. Cola drinks taste almost alike, that is,

(Deposition of R. L. Wayman.)

I could not tell the difference. I have seen Coca-Cola barrels being delivered to soda-fountains around town, or sitting out in front of soda-fountains. I would not know a Coca-Cola barrel if I saw it, all I would go by would be the name on it. I have handled Coca-Cola. I quit handling it; the other is a little cheaper, is the only reason, cheaper to me.

Cross-examination.

I am the owner of this near-beer business. About three years I was [795] manager of the Wakeman Distilling Company. Mr. O'Grady is one of the owners, I suppose. Mr. O'Grady has not a nickel's worth of interest directly or indirectly, in the near-beer establishment I am not proprietor of. He does not sell me stuff. I am buying from the Chattanooga Bottling Company. I have handled his brands. The names of his brands are O'Grady Special, Old Wakeman. They sold to Little, of the Lexington Brewing Company. I bought a place two blocks this side of theirs. I have not had any connection with O'Grady in two years. I have known of this drink Koke since I have been in this lower place of business, that is about a year, I expect, or a little less. I never heard of the expression Koke before that time, at my bar.

Q. 57. Have you ever heard the expression Koke used before the product came on the market?

Mr. LITTLETON.—I object to the question and the answer on the ground that there is nothing in the direct examination of the witness to warrant it.

(Deposition of R. L. Wayman.)

Objection overruled and appeal prayed and granted.

A. I have had them call for Koke and Dope. The greatest word they use when they want a soft drink is Dope, that is all I can remember. If they call for Coca-Cola I do not have it. When a man came into my store and asked for a Koke, prior to that year, I have known of a product labeled Koke, I would have told him I did not have it. I heard of this name Koke before the product Koke came out. I would tell them I had some Dope, and they would say, "All right, let us have it." In other words, they used the words Dope and Koke to just mean anything. I have stopped handling Coca-Cola off and on, two or three different times. The last time I handled it I think I got one or two cases of Coca-Cola when I bought this place out, the one I am in now, and I have been there a year and six months. That was the last time. The first time I ever handled Coca-Cola was six years ago. I have known of it a long time; I have known it practically ever since it has been out. I never handled [796] any, but I have seen the crown "Dope" here in Chattanooga. I am not positive whether it was here or in some other city, but I do remember seeing the crowns with D-o-p-e on them. I have sold other drinks when that was called for. Tru-Cola, Ala-Cola and Koke, that is what I call Dope. I never sold Coca-Cola in response to orders for Dope. If he asked for Coca-Cola I would give it to him; if he asked for Tru-Cola, I would give him Tru-Cola. I never sold Coca-Cola when Dope was

(Deposition of R. L. Wayman.)

called for. If a man asked for Coca-Cola, I gave it to him; if he asked for Dope I gave him what he wanted. I do not let Dope apply to Coca-Cola. If a man asks for a soft drink, I ask what kind he wants, but you might apply Coca-Cola to Dope, too. I have always handled these soft drinks I have given. When I was handling Coca-Cola alone, I would give that in response to calls for a cola or a dope. I have asked them what they wanted when they asked for Dope. I always give a man what he asks for. I handle these other drinks I have stated, because they are a little cheaper. I have only had two cases of Coca-Cola in my house in the last four years. If they asked for Dope I give them Dope; if they asked for Coca-Cola I give them Coca-Cola. Coca-Cola is a Dope like all the rest of the soft drinks. Dope applies to all soft drinks, all dope stuff. Most invariably, when a man calls for dope I ask what kind of dope he wants. I have known this drink Ala-Cola about a couple of years. Tru-Cola I have been handling that ever since I have been in the business. I do not know whether it has been under the name of Tru-Cola or not, but I have handled that three or four years, anyway. Maud Muller is a recent drink, it has been out about a year, I understand.

Deposition of C. P. Embrey, for Defendants.

C. P. EMBREY.

Direct Examination.

Thirty-nine years of age, live in Chattanooga, Tennessee. Engaged in retail drug business, located

(Deposition of C. P. Embrey.)

600 Market Street. Been in business on that corner seven years. Have soda-fountain in connection with the drug-store. I dispense soft drinks at my soda-fountain. I dispense cola drinks there, and I dispense Coca-Cola, and one named Ko-Nut—some of this Koke in, too. The product Koke is made here [797] in town by the Koke Company of America, I think. Other Cola drinks I have known of used to be one made by the National Beverage Company. I have heard of Tru-Cola. There are so many nearly everybody who opens his grip when he comes in has a cola syrup to sell, and, naturally, you would not remember all that comes around; there is a great many cola drinks on the market. The color of the syrup of these different cola drinks are identical with the color of the Coca-Cola syrup. I have tested mighty nearly all of them; the taste of these different cola syrups compared with the taste of Coca-Cola, well, there is some identical, some better, a little bit, and sometimes when you put carbonated water in them, if the carbonated water is heavily carbonated, it will change the flavor a little of most any of them. I could not distinguish a glass of Coca-Cola by its color. I could not distinguish a glass of Coca-Cola from a glass of Root Beer, both are dark brown. I have known of the drink Root Beer fifteen or twenty years, I reckon. The completed beverage that I dispense is made from syrup and added carbonated water. The root beer I have known in the past fifteen or twenty years has been substantially the same color as it is to-day. Some cola syrups I have handled come in red

barrels and some in plain barrels without paint on them at all. I could not tell a Coca-Cola barrel if I saw it and did not see the label on the end of it because they are all colored red, about the same thing. When customers call for dope, we give them the one we make the most money on. I do not regard the word dope as a specific and definite request for Coca-Cola, exclusively; I regard it as a nickname for that class of drink. I have heard the word dope, I will say ten years, but during all that time it had the same meaning to me that I have just stated. Dope at a soda-fountain means a drink that exhilarates, like caffiene drink, and dope at a prescription counter means some narcotic used in an abnormal way, or used in excess, that is the way I look at it. The way I look at it, it has been in litigation that Coca-Cola or any of those dope products are injurious to you, you see, and then people just got the idea that the [798] drinking in excess would injure, that is the way the public would think whether it was true or not. I have heard some say, "Do you reckon it will hurt me to drink four or five before dinner," that is the way I think it came about, just like in medicine, if it was used in a small way it would not hurt, but if used to excess it would be very harmful. If every one of these drinks are fixed right and the carbonated water was right, and the ice was right, I have never had it rejected so far as I know. We do not handle Hires Root Beer; we have not for years. I cannot tell any difference between the Root Beer we handle and Hires. The color is about the same. I have had

(Deposition of C. P. Embrey.)

calls for Hires Root Beer, and told them we did not handle that, but handled Smith's Root Beer. The customers would be satisfied. They wanted a drink of that main general description. That same situation applies to the cola-drinks. I have had a representative of the Coca-Cola Company call on me January 9, 1914. This gentleman setting over here, Mr. H. B. Pierce, called on me. He came into my place and said he wanted to speak to me privately, and dictated on a pad, with a pencil, dictated about a three page manuscript that intimidated me and bound me not to handle anything else except Coca-Cola, or he would threaten me with suit if I did not do it; and I thought it was better to sign up than—until I found out whether I was right or wrong—than to get into litigation. I signed that contract unwillingly, it was either sign it or be sued. He threatened to sue me because I handled Ko-Nut; one thing I recollect, he had some copies of way-bills, shipped from Atlanta, as evidence that I had been buying—or bills of lading, rather. I signed the contract. I have not quit handling Ko-Nut. I found out afterwards I had a right to handle both, according to my attorney, just the same as I had a right to sell a bottle of Peruna, or a bottle of "S.S.S." I consulted an attorney about it, W. B. Miller; he advised me to go to law about it, but I told him I could not afford to do it. I did not have the money; I did not have it. In fact, I could not afford [799] to go into litigation about a thing like that. In other words, it would be cheaper for me to sell Coca-Cola than to hire an attorney.

(Deposition of C. P. Embrey.)

Cross-examination.

I pay one-fifty a gallon for Coca-Cola. One dollar for Ko-Nut. One dollar a gallon for Koke. I get five cents for a glass of Coca-Cola over the fountain. Five cents for a glass of Ko-Nut. I have been handling it ever since I have been in business, I think. Ten years, I think. I have been handling Ko-Nut three years, I think. I signed a statement like this—"During all the time I have been in business at my present location I have sold Coca-Cola through the soft drink fountain, up to some time in 1912, when I began buying Ko-Nut syrup from Hagan & Dodd of Atlanta." I started selling Koke I think about a year—maybe two years, time passes so fast I do not know whether it has been a year or two years, I have known of Koke about two years. Before I knew of the product Ko-Nut and the product Koke, there was a product called Afri-Cola, it was in extract form, but it did not have a flavor which had been perfected so that it was a desirable drink and we didn't keep it. This drink was not palatable. It was not the flavor Coca-Cola had. That was the flavor they were getting at, and did not get, that was the reason it did not go. I handled Coca-Cola before I handled this Afri-Cola. Afri-Cola sold at seven dollars a gallon in extract form. It was cheaper than Coca-Cola. I heard the term dope used. At that time there was no other drink on the market but Coca-Cola, and I understood that was what they wanted. That was what I under-

(Deposition of C. P. Embrey.)

stood they meant by Dope. At the time I handled Afri-Cola and Coca-Cola alone and a man came in and called for a dope, I gave them Afri-Cola. Because of more profit. When I put in Ko-Nut I gave up Afri-Cola. Afri-Cola is not nationally advertised, I do not think. When a customer asked me for a dope I gave him the only thing we had, Ko-Nut. The drink was palatable and pleasant to the taste and another reason was because I made a better profit. Now, when a person asks for dope, I give the one we **[800]** make the best profit on, which is either Koke or Ko-Nut. I do not think Ko-Nut is nationally advertised as a drink. I do not think Koke is nationally advertised. I have had calls for Ko-Nut under its name, just a few local calls for it, people that know I have it. We serve Koke when dope is asked for. I have been handling Koke for about two years. Commenced using one urn for Coca-Cola and one for Ko-Nut or Koke since January, 1914, before that time I was serving both ways, in bottles. I had one bottle sitting on one side. I might have served Ko-Nut, Coca-Cola and Dope out of the same urn. I know we don't substitute it, we kept it straight there, we had a bottle on the side that had Dope in it. We never served in response to a call for Dope out of the same urn we served in response to a call for Coca-Cola. We had two different urns to put the labels on. I never did do that, I know I did not do it intentionally, it is possible I may have done it. I purchased Coca-Cola prior to January 9, 1914, from Trigg, Dobbs & Company,

(Deposition of C. P. Embrey.)

and from Fritts & Wiehl. I think I bought a barrel or two. Before buying this Ko-Nut and Afri-Cola, about three barrels per year.

Q. 155. You made this statement, did you not: "So far as I understand and know, we have never had a call for Ko-Nut at our fountain under its proper name of Ko-Nut; but have always sold Ko-Nut as a substitute for Coca-Cola and Dope. I have purchased about eight barrels of it, from forty-six to fifty gallons each, of Ko-Nut syrup, in the past two years, and during that time I purchased about three barrels of Coca-Cola syrup from Fritts & Wiehl, Chattanooga, Tenn.

A. I may have signed that; but under intimidation I would sign anything. I had to sign anything in order to avoid litigation. I wanted to have this gentleman make two typewritten letters so as I could see what I was signing. He would not let me have it typewritten, he wanted it secretly, so I would not have a chance. I signed a statement reading something very much like that.

Mr. HIRSCH.—I will read it again; "So far as I can understand or **[801]** know we have never had a call for Ko-Nut at our fountain in its proper name of Ko-Nut, but have always sold Ko-Nut as a substitute for Coca-Cola and Dope."

A. If I signed that I was not in my right mind. Mr. Bogart was present at the time the statement was signed, he is a clerk at the store. There is another clerk, I do not know whether he knew anything about it or not. Tom Duff came in about that

(Deposition of C. P. Embrey.)

time from Fritts & Wiehl Company, he came up about the time I signed it.

Q. 182. I will read further: "I have purchased about eight barrels of from forty-six or forty-eight gallons each of Ko-Nut syrup in the past two years, and during which time I have purchased about three barrels of Coca-Cola syrup from Fritts & Wiehl, Chattanooga, Tennessee, and Trigg, Dobbs & Company of Chattanooga, Tennessee."

A. That is true. During the year 1913 I kept Coca-Cola in a container or dispensing bottle and when a man called for Coca-Cola I gave that to him. When a man called for dope I always went to some other container and got it out, that is, prior to January 9, 1914, since then I have two containers. I started handling Koke probably two years ago. We had the Koke and Ko-Nut we served out of the same container. We have mixed them frequently, but we have dispensed Coca-Cola with simple syrup added to it. I have not mixed Coca-Cola, Ko-Nut and Koke together not that I know of. The dispensing bottle with the Ko-Nut and Koke in it had no label on it. The bottles are glass and the labels wash off, sometimes this dispensing bottle is not labeled. That label depends upon which one we had, Koke or Dope, we did not mix Ko-Nut and Koke, we dispensed those things, that at one time we had Koke and another time we had Ko-Nut in it. Since about January 9, 1914, we have not had Ko-Nut, Koke and Coca-Cola all the time. We have not had Koke all the time. I have always had some Coca-

(Deposition of C. P. Embrey.)

Cola in my house. There was a time when I had all three in my place of business at one time. Have had all three in my place of **[802]** business at one time and had Coca-Cola in the container in my fountain. We have dispensing bottles for the others, one dispensing bottle for Koke and one for Ko-Nut, and have one for the other. We had eight or ten bottles. We had one representing each drink, one representing Ko-Nut and one representing Koke. The Ko-Nut bottle was labeled Ko-Nut. We have one with Koke on it, the dispensing bottle was furnished us, sometimes it got broken and we put it in something else. (Exhibit No. 1, Henry Boerger's testimony shown.) It was "K-o-k-e," a different size but looks like the same form. When a man came in and asked for a dope at that time I had those two dispensing bottles up there and Coca-Cola in the fountain, I gave him either one, Koke or Ko-Nut. I never gave him Coca-Cola because I thought it was more profitable. I quit selling Coca-Cola in response to calls for Dope when these other drinks came out which were cheaper. I had a soda-fountain dispenser. As to whether he ever sold Coca-Cola in response to a call for dope, I do not know, a boy of his age may have served either one of them, he may have done it but I did not do it. I do not know anything about the soda-fountain only in a general way. I served the soda-fountain as an apprentice ten or fifteen years ago. The first time I ever heard of Coca-Cola, it was in sealed quart bottles; they served it over the fountain. At that

(Deposition of C. P. Embrey.)

time we did not know anything about Coca-Cola out in the country, or know how to serve it, but we took that quart and put it in three qparts of syrup. At the time of my apprenticeship I did not know about these drinks. When a person came in and asked for a dope I gave him Coca-Cola, but since these cheaper products have come on the market we give the cheaper product. That is the instructions at our place to our men. I do not know what they give in response to orders for Dope. When a customer comes up to our fountain and asks for a dope I do not know what the boy gives him. I think he carries out my instructions. These containers are kept in a slab in front. We have these pumps that slide down too. **[803]** You pump it with one and the other you have to take the bottle out. I have never substituted Ko-Nut when Coca-Cola was called for. Mr. Pierce told me at the time of the conversation that what he wanted to see me about was the alleged substituting these other drinks when Coca-Cola was called for. That led to this agreement. He came in and told me that there would be a suit if I did not sign the paper, and I did not know at that time that I had a right to handle anything but Coca-Cola. Until these cheaper products came on the market I understood Dope to mean Coca-Cola. The cheapness of the product was what changed me. It is not a fact that when such syrup as Ko-Nut is sold to a dealer, it is understood that the dealer can use such syrup as a substitute for Coca-Cola. About the time this salesman came in

(Deposition of C. P. Embrey.)

with this paper I was just going to dinner and in the way it came about I did not even have time to speak or think. It was either settle or enter into a lawsuit or get out some other way. I read it over and said, "Let it go." I let Mr. Pierce come up to me and signed this statement with that acknowledgment in it before witnesses and I let Mr. Pierce simply bluff me into it. I wanted to keep out of litigation as I did not have the money to carry it on; I had to look out for my own affairs, I signed it whether it was true or not, I was willing to sign an untruth in order to keep out of court because there are a lot of things I have to take; I have not got the money to pay an attorney. I was not substituting Ko-Nut for Coca-Cola and never had done it. I guess samples were obtained of what I was selling, I have had people come in and call for pints and half-pints. If people called for Coca-Cola I served them Coca-Cola, if I waited on them. My boys I do not know, I presume they did what I told them. Coca-Cola is pretty well advertised. I do not believe I have ever been to a place where it is not well advertised, and always has been a demand for it. There is more demand for dope now than Coca-Cola. My trade down there is right around two theatres where there was a good many transfer people, stage hands and **[804]** that class of people who always—when they get paid off, they come around and say, "Give me a dope"—"Shoot me in the arm"—"Give me a little of this"—something like that, and they always say, "Give me some

(Deposition of C. P. Embrey.)

more of that," and so our trade is not so very discriminating. I get down a drink out of any cola product and the men most generally like anything I am serving. About this statement and conversation with Mr. Pierce, I knew the general contents but I did not know the particular wording. I read it hurriedly with the intent to get rid of it so as to go out home to my meal; they were calling me and I thought it was best to sign it than to be brought into litigation. He came in and said, "I am a special representative of the Coca-Cola Company." I said, "How-de-do?" He comes up to me that way, with a little grip, and he pulls out some papers and he says, "I want to talk to you back somewhere, where I can talk to you secretly." He seemed to think I was a criminal. Mr. Bogart did not know anything about it. In our store we try to keep it all wide open, everything so everybody can see, and Mr. Pierce had what looked like a yellow slip I think, or a tabulated copy from a typewriting record, from the Atlanta office, I think you have it there. It was a bill of lading; and he had those bills of ladings that he had got copies of, and then he says, "We see you have been buying Ko-Nut from Hagan and Dodd, and you have not bought as much Coca-Cola from Fritts & Weil, and we want you to quit selling Ko-Nut. He told me if I would agree not to sell Ko-Nut or nothing—it is in that manuscript from which you read just now—if I would not sell any other drinks or any similar drinks or any other kind of drink like Coca-Cola

(Deposition of C. P. Embrey.)

they would not proceed against me, they said, for substituting for Coca-Cola. And then I told him, I said, "I want to know Mr. Pierce if I sign this agreement, will there be any litigation against me"? He said, "I assure you there will not be, Mr. Embrey." I said, "I will order another barrel of Coca-Cola right now," and I telephoned them to send me another barrel of Coca-Cola. That is all I can recall. **[805]** He had a bag of papers there, reports of employees who purchased a sample of stuff. ("Plaintiff's Exhibit 1, February 12th, 1912, in the testimony of C. P. Embrey presented.) I do not remember this paper, he may have used this at the time he came in there to see me. I do not believe I remember of seeing that paper about buying Coca-Cola syrup in my house. I don't believe he discussed with me the question of having bought some syrup at my place of business. I do not remember this paper marked Complainant's Exhibit No. 11. It is possible that I have seen those papers before, I cannot recall that to my recollection right now. This looks to me like a record of some one buying stuff for me or my fountain and says how it was dispensed and what went with it but I do not remember seeing this paper before. Mr. Pierce might have at the time shown me this paper. It might have been in the bunch of papers he had. He accused me of substituting for Coca-Cola in his other transaction. He did not substantiate that my place of business had probably made a mistake or error. The possibility that I had made

(Deposition of C. P. Embrey.)

a mistake did not have anything to do with it at all. I had a similar case some time ago where a woman slipped up on the floor at my fountain. I went to Mr. Preston at the bank and asked him what I had better do. He said, "Embrey, she wants $50.00. It will cost you $50 or $75 or $100 to buy an attorney. You go and pay that woman and take a receipt in full." That was the same principle that I had practiced prior to this, and I thought that was the best way we could keep out of litigation. I believe it is cheapest to confess that I have done wrong than to have litigation. Mr. Pierce did not ask for money but he intimated litigation. He said if I did not stop substituting he would institute litigation, and sign that agreement that I did not have anything else in my store. I would have confessed to any condition rather than go into litigation. I put simple syrup in Coca-Cola and sold it as Coca-Cola. I only had one container and that contained Coca-Cola and when a man asked for a dope I gave him a drink out of that container. [806] My boys may have made a mistake. There is no question about the drinks being of the same color and taste, and I cannot tell the difference. The only reason I signed that statement was that I did not want any litigation, not that I confessed myself guilty. Mr. *Mr.* Pierce at the time of that interview read to me from reports; I do not remember reading them—there was a great bunch of papers there. Mr. Pierce read me some typewritten matter, but as I said at the time he came up and I

(Deposition of C. P. Embrey.)

thought more of his remark of the Coca-Cola's people litigation and I said, "Well, just go ahead and I will sign up this agreement and sell your Coca-Cola. It will be all the same to me." I did not want to get into any litigation whether it was mine or anyone else's. I am in this litigation at the request of Mr. Littleton. I told him I did not want to come, I did not want to get mixed up in it, because my time is required at the store and with my other affairs; I do not want to go on any witness-stand where you are gruelled by the attorneys. I would have been subpoenaed if I had not come. He did not tell me that—I knew I would. Mr. Littleton asked me to tell the truth, that was all he wanted. I thought he told me that they wanted to take my deposition up here on some matter, and at the time Mr. Pierce was there he told me that.

Q. 396. Is this true or not that I read you? "Will advise that C. P. Embrey is one of our good customers, however, we are sorry to say that he had not been buying Coca-Cola from us in such quantities as he should. Last year he bought from us one barrel of forty gallons, this year he has bought one ten gallon keg, same delivered to him under date of August 4th. We think you will find that this party does not purchase from your other distributors here. We feel that if you would put the matter up to him in the right manner he would see the error of his way. We trust you can see our position in this matter."

A. It might have been so. I do not know whether

(Deposition of C. P. Embrey.)

I bought any from Morris in St. Louis or not, or from the Brock Candy Company of [807] Chattanooga. I cannot remember whether I did or not.

Q. 401. Is this true "Replying to your favor of the 16th will say we have not sold Mr. Embrey any Coca-Cola in over two years; we do not know where he is buying, but think from Fritts and Weihl Company, as it is our understanding, signed up with them, although we are not positive about this."

That is the Brook Candy Company. So far as I remember, that is true, I have not looked at the letter. "We are in receipt of your favor of the 5th, and will advise that we have made delivery of two barrels of Coca-Cola to C. P. Embrey since January 9th, the total of which is 81 gallons." That is Fritts and Weihl, dated May 6th, 1914. I have no reason to doubt it, I was handling at that time Ko-Nut, Koke and Coca-Cola. Up to August 4th I had only bought ten gallons of Coca-Cola. I take that statement as being true. The litigation that I remember now is the different people trying to find out from litigation whether the Coca-Cola Company has the right to sell drinks of that character and without competition. There was one in Nashville, if I remember, the Nashville Beverage Company. The Coca-Cola Company against the Nashville Syrup Company, I think so, I got that information somewhere. That was litigation to keep them from serving the same syrup. I got my idea of dope from litigation concerning the injurious effect. I refer to the case brought in Chattanooga, the Gov-

(Deposition of C. P. Embrey.)

ernment case. That was over Coca-Cola. I was serving these three drinks, I only had one container in the fountain for Coca-Cola and two dispensing bottles. I got my Coca-Cola syrup in red barrels, I think. We did mix Coca-Cola for awhile with simple syrup. We did that, as a matter of economy, and I think then for my taste it was too sweet, and if it was too sweet, it would not be economical to do so, so we quit. We did it for two reasons, for economy and to get it to suit the taste also. I do not know how long I had Coca-Cola in that container in the fountain. There are some things I do not have to look after around the fountain, I am around there two or three times a day when I go and get a drink. I am the prescriptionist. [808] There are several hours of the day I am not in the store, I am back filling prescriptions or out of the store. I do not know whether they are serving Coca-Cola out of that container in the fountain when Dope is called for or not, but I know they are going against my instructions if they do. I never served it myself out of that container in response to calls for Dope. I always serve Ko-Nut or Koke in response to calls for Koke or Dope, since I have had them. I have had Koke on hand since somewhere around two years ago. Some representatives from the local concern sold Koke to me. He just said, "We are going to put in a new cola drink, Koke, and sell it to you for a dollar a gallon, a home enterprise," and he showed me—he said everybody else is buying it, and went on and showed me a list of orders, and said, "It is a

(Deposition of C. P. Embrey.)

good drink, taste some of it and try it; if you like it, buy some more." When he came in I was waiting on someone; I do not know what I was doing, exactly. I was standing in the middle of the store, and he said, "Say, come up here Embrey, I want to sell you some syrup." I came up and tasted it. He said, "That is made by the Koke Company of America." He said, "It is a local enterprise; try some of it." I said, "well." He said, "There is a fine proposition," and showed me a lot of retail orders of retail stores, men that have been in business some time, and about things of that kind, frequently that is my index to purchasing—seeing the orders of people who know more about the business than I do, who have had longer experience. I said, "Well, send me some down and I will try it." I told him it tasted good. He said, "Shall I put down a barrel?" and I said, "No, put down a little and I will try it." My recollection is that was about all that was said. Nothing was said about Coca-Cola, Ko-Nut, Koke or Dope. I do not remember any statement he made to me other than that. I have had calls for Koke. I gave them what I had. Prior to the time I had Ko-Nut and Afri-Cola, I had calls for Koke. I give them Coca-Cola. That was what I understood they wanted at that time. Koke and Dope [809] do not mean anything particular since the low-priced drinks have come on the market. I do not sell Coca-Cola now in response to either call, and if Coca-Cola was the same price as these others I would sell it in response to orders for Koke or Dope.

(Deposition of C. P. Embrey.)

Redirect Examination.

There was a time when I handled Coca-Cola exclusively. When I began to handle these other cola beverages I had different containers for the three beverages I handled.

Mr. HIRSCH.—I object to that; he did not testify that. It is a leading question.

Exception overruled and appeal prayed and granted.

I misunderstood his question. I did not mean to say that at the time I handled Ko-Nut, Koke and Coca-Cola that I put all three of these drinks in the same jar or container. I had heard, at the time Mr. Pierce came and called on me, of the suits brought by the Coca-Cola Company against other druggists handling competing drinks to Coca-Cola. I had heard of the Coca-Cola's system of detectives.

Recross-examination.

Just after Mr. Pierce came into my store I went to see Mr. E. B. Miller. He is the attorney who represented the Government. I thought he would be better posted on those things than anyone else I could go to. I asked Mr. Miller what about it. "Well," he says, "If you serve those drinks, Coca-Cola and Ko-Nut and those other drinks, there ought not to be any suit against you. If you want to handle a preparation that gives you more profit," he said, "Whenever Atlanta Coca-Cola is called for, dispense to them Atlanta Coca-Cola," and, he said, "whenever you have a call for any of those other

(Deposition of C. P. Embrey.)

drinks, give them that, if you have calls for Koke or Dope, or any of these other cola drinks, you serve them the ones that pay the best profit, or the ones they are calling for. If you want to serve it you have a right to serve either one if you want to when you do not have a [810] call for Atlanta Coca-Cola." I said that I had a jar in the soda-fountain, the one that had Coca-Cola made in Atlanta, in that one, and I put these other drinks in dispensing bottles, labeled by their respective names. I think that was the proper and legitimate way to handle them, so I could get my profit out of the others and at the same time not substitute on the people. I changed the system after my conference with Mr. Miller because I had more drinks and I thought a little more distinction should be made. Before that some were sitting in one place and some in another, but they were not labeled and were not carried on in the way I thought they ought to be. I could not tell them apart, and I wanted to get the boys so they would not serve Coca-Cola when the other was called for and the other when Coca-Cola was called for, and if he got the sample of it, it would be sure to be sample of Coca-Cola when he called for it. I changed the system to avoid the possibility of substituting. You see a boy would not be as discriminating as a man and it may be that they did substitute.

Deposition of C. H. Crimm, for Defendants.

C. H. CRIMM.

Direct Examination.

Have resided in Chattanooga, Tennessee; lived here two years. Before I came here I lived in Denver, Colorado, Birmingham and Atlanta. I am manager for the Germania Life Insurance Company of New York, for East and Middle Tennessee. I have held that position since I have been here, two years. Prior to that time I was engaged in life insurance business. I know Mrs. J. S. Pemberton, the wife of J. S. Pemberton just slightly. I witnessed a certificate signed by her. (Q. 11.) I will ask you to look at that top certificate there and state whether or not you witnessed a certificate containing the substance of that?

Mr. HIRSCH.—We object to that on the ground that it is incompetent evidence. We object to the testimony here and contained in the card presented to the gentlemen as incompetent testimony and hearsay. We object further on the ground that the card should not have been introduced in evidence nor any testimony about it [811] introduced until the original is produced; and if the original is produced we object on the ground that it is incompetent as we have not had the right to cross-examine the party that made the affidavit. The whole thing is entirely immaterial.

Objection overruled and appeal prayed and granted.

(Deposition of C. H. Crimm.)

I do not exactly remember the substance of that certificate, but if I could see the original—I just witnessed the signing of it. Mrs. J. S. Pemberton signed the certificate about 1889, in Atlanta, Georgia, in the old Norcross building.

Mr. HIRSCH.—We object to all this testimony for the same reason and on the additional reason that this gentleman says he does not remember what was in the affidavit.

Objection overruled; appeal prayed and granted.

(Q. 16.) Do you remember the general trend of the affidavit, what it purported to state?

Mr. HIRSCH.—We make the same objection as heretofore.

Objection overruled and appeal prayed and granted.

It was along the line that they were associated in business. Mrs. Mayfield was associated in business with her husband when they manufactured a beverage there several years ago—along that line. I know that much.

Mr. HIRSCH.—We object to that as hearsay, and as being incompetent evidence as to what the affidavit stated, because the affidavit itself would be incompetent evidence, and because he is quoting from what he saw in the affidavit, the affidavit being the best evidence of what was in it; and in the second place, the affidavit if produced would be incompetent. We object to questions and answers on the same ground.

Exceptions overruled and appeal prayed and granted.

(Deposition of C. H. Crimm.)

(Q. 18.) Do you remember the name of the beverage that she states in that certificate that her husband and J. C. Mayfield have been manufacturing? [812]

Mr. HIRSCH.—The same objection to question and answer. Same ruling.

Coca-Cola. I don't know what became of the original certificate. I do not know what became of the gentleman who signed there as Notary Public, Mr. Fred W. Burress. He was a young lawyer there in Atlanta. I do not *know became* of Mrs. J. S. Pemberton. I know Mr. J. C. Mayfield very well, indeed. I first knew him in Atlanta. I met him in 1897. At that time he was manufacturing drinks, Wine of Cocoa and this other stuff that he had there, and he was in the real estate business, and had his office in the Norcross Building. I think he had two drinks besides the Wine of Cocoa, but I am not positive. That Wine of Cocoa was a drink something similar to the Coca-Cola. It was a syrup that he was manufacturing. That other drink I spoke of was a similar drink but different in flavor. I tasted those drinks. The other drink, I cannot remember the name of it. There was not much difference in taste. I could not say exactly how it tasted compared with Koke, this drink made by Mayfield today. It was similar. It has been since 1897 or 1898, I could not exactly recall the taste definitely, but I know it was a drink just like it. I know that much. The color of those two drinks at that time was brown, light brown, similar to the color of Coca-Cola. I went down to his place of business while he was

(Deposition of C. H. Crimm.)

there. I noticed barrels and kegs in his place of business. The color of those barrels and kegs was red, dark red. I knew Mr. Mayfield in Birmingham about nine or ten years ago. He was engaged in the same business there, manufacturing drinks. At that time he was manufacturing a drink called Koke and something else, I don't know what it was, something like that too. I went down to his business while there a number of times. I noticed barrels and kegs there, they were red, same color as those he had in Atlanta. I remember seeing labels around there, but whether they were on the barrels or not, I could not say. I do not exactly know what was on those labels. I do not remember whether I saw any [813] labels that had the word Koke on them. *I* has been some time since. He called this drink Koke, and I remember him asking me to take a drink and bringing it out there to me several times. The taste of that drink was the same as the one he has been making in Atlanta. I have known him from then up to the present time. He has been in the same business all along.

Cross-examination.

Mr. HIRSCH.—The first thing we want to do is to move to strike all the evidence, both questions and answers pertaining to the affidavit except that part in which the witness states he was a witness thereto, all evidence pertaining to the contents of the affidavit, and the affidavit itself on the ground that same is incompetent evidence.

(Deposition of C. H. Crimm.)

I lived in Denver a couple of years about. Immediately prior to coming to Chattanooga I lived at Omaha. I lived at the Grand Hotel in Council Bluffs but I did business over in Omaha. I didn't come south at all, into this part of the country during the time I was living there. I lived in Council Bluffs about a year. I was in Denver before that. I never came into this part of the country while I was out there. Immediately before going to Denver I was in Birmingham. I was in Birmingham four or five years. During the time I was out West I saw J. C. Mayfield's son out there. The son's initials are the same as that of the old man, his son, J. C. and he was in the same business out in Denver. Selling the same stuff Koke, out in Denver. He had an office down on some street, I cannot remember the street, back of the hotel, I cannot remember that either. Before going to Birmingham I was in Atlanta. Atlanta was my headquarters. I was in Atlanta seven or eight years, in fact, I was in Atlanta in 1897. You can figure those up. I may not have them correctly, but I went there in 1897 and made my headquarters. Prior to that time I lived in Lexington, Kentucky. I was born there and lived there up to the time I came to Atlanta. I was in the life insurance **[814]** and I rented an office right next to his in the Norcross Building at the corner where the Fourth National Bank is now. I met him that way, being right together you might say, in the same office. I did not know Mr. Mayfield before 1897, or know anything about him at all or what he

(Deposition of C. H. Crimm.)

was doing. I met him in 1897, I think it was in August, or September, along about that time. Mr. Mayfield at that time had his office there at that place in the Norcross Building, and he opened up a place down on the corner of Forsyth and Trinity, that must have been the street, down there next to the bridge—four or five blocks from the bridge. There he manufactured syrup. I could not say who he was with. I knew him personally and very intimately. I did not know any of his family, I think he was married, I never met his wife. He was at that time manufacturing a drink called Wine of Cocoa as one of his drinks. I saw the name there in one of his offices, on his letterhead I suppose. I am not certain what else was on his letterheads, I do not know whether Pemberton Medicine Company was on it or not. I remember Wine of Cocoa was on the letterhead. I remember that name because it was peculiarly written, and that is the only thing I remember. I have seen him manufacturing syrup, seen him at it. I have seen him manufacture it in that place on Forsyth Street, somewhere in those three or four blocks. He had a negro there helping him. He had an office in the Norcross Building at the same time in the real estate business. A man named Eley, Tom Eley was in partnership with him in the real estate business with him. I do not think he was in the manufacturing business with him. There were two other drinks besides this Wine of Cocoa, I do not remember anything about them. He was in Birmingham and there were other drinks there. I do

(Deposition of C. H. Crimm.)

not remember seeing any other drinks around there except the Wine of Cocoa. I was about his place frequently, a number of times. He made up two other drinks, similar kinds of drinks. They looked the same, I was not much of a drinker of that kind of drinks. I have seen them sold around at places where you get drinks, in other words there were two soft drinks besides the Wine of Cocoa. The only [815] containers I ever saw him use for these drinks, had the seal on it. The only one I ever saw sold was Koke. I do not remember seeing it in Atlanta, I do not remember seeing the labels of it. The first time I ever saw any labels of Koke was in Birmingham, Alabama, some nine or ten years ago, that was the first time I remember seeing it. I saw some things around in his office, just labels, I think the word Koke was on them. Celery Cola. He had at that time manufactured a drink of that kind. I do not remember exactly what they were printed on. I know I have seen the name Koke. I do not think I saw the name Celery-Koke there. I did not know at that time whether Mr. Mayfield and his associates were manufacturing a drink they called Celery-Cola at that time; I know somebody had. I am not sure if he made the drink. About that time I know he had the barrels in there, kegs and such as that. I cannot say whether I ever saw Koke on a keg or barrel or not, but I have seen it on packages, on bottles, and I have seen it pasted on something time and again. I had been intimate in a way; I did not associate with him every day; I did not see him every

(Deposition of C. H. Crimm.)

day. I saw him probably once a month, something like that, and would go into his place of business, drop in there, just as anybody would having an acquaintance and in passing that part of town, his place of business in Birmingham, Alabama, where the old depot is. When I went to Birmingham, I called on him, in the course of my business. I went around there once a month probably, pretty regularly, sometimes not that often. I could not say how often I did go there; I did not go any more than that. I saw him manufacturing a drink called Koke and something else, I do not remember the name. I do not know whether it was Celery-Cola or not. I know he manufactured Celery-Cola at some time, but whether he manufactured it there then or not I do not know. I think Mr, Mayfield left Atlanta before I did. I do not know what became of his business. I do not know whether Mr. Mayfield was manufacturing a drink called Yum-Yum or not. This was a manufacturing plant. I [816] do not think he bottled his syrup, it was manufacturing syrup. This business at Birmingham was both manufacturing and bottling. I do not know who Mr. Mayfield's wife was at that time. I did not know anyone connected with the family except Mr. Mayfield. I never met his wife. I know nobody connected with that place of business with Mr. Mayfield at that time except Mr. Eley. That firm was known as Eley and Mayfield, the real estate firm. Mr. Eley was connected with the Holly-wood cemetery as secretary and treasurer. I think they promoted it. I did not know about the company

(Deposition of C. H. Crimm.)

known as the Guaranty Bond and Savings Company. I do not recall how long Mr. Mayfield stayed in Atlanta after I met him in 1897. My business was such I was in and out of there. I saw him there in 1899. I do not know whether he was living there or not. I would meet him down town, pass a few words with him. I do not know when he gave up his office in Atlanta that was next to mine, because I could not stay in that office very long myself. I do not think he went direct from Atlanta to Birmingham. I went to Birmingham nine or ten years ago; Mr. Mayfield was there at that time. I was in and out of Altanta as late as 1901; I made my headquarters there. I saw Mr. Mayfield there in 1901. I seen him about there. I am very sure about that. I knew nothing concerning the firm Heabley and Harris. I did not know one W. R. Harris. I may have met him casually, but I do not remember him. Mr. Mayfield was in Birmingham all the time I was there. So far as I know, he was in business all the time I was there; I think it was the same place; I am not sure of that. The last year I was there I did not go around there much, I do not think, because I was not in town all the time; I was in town very little. I cannot say what the name of the concern was he was doing business under in Birmingham. I have seen the name J. C. Mayfield Manufacturing Company, but whether I saw it in Birmingham or not I do not know. He was doing business in Denver, I do not know what name it was under. I recall the name of J. C. Mayfield Manufacturing Company. This product he was

(Deposition of C. H. Crimm.)

manufacturing [817] was sold in a syrup or extract, I do not know which. At one time I know he put it out in small packages in concentrated form, whether that was in Atlanta or Birmingham, I do not know, but I know he talked about it, and I know he sold it in concentrated form at that time. I do not know whether it was Birmingham orAtlanta, it was one of the two places. I do not know whether he sold Wine of Cocoa in the syrup or extract form. I know it was bottled, though, in a bottle something like that he used (witness indicates Defendants' Exhibits numbers One and Two), in Atlanta.

Mr. LITTLETON.—Show in the record he is pointing to Defendants' Exhibit Number One.

He had a crown something like that, it was put on with one of those machines, I saw him doing that, that was in Birmingham. I do not know what was on the crown. I lived in Atlanta some seven or eight years and met Mr. Mayfield in 1897 when I first arrived there. I cannot tell you how long Mr. Mayfield remained in Atlanta after I arrived there. I know I would see him at Atlanta every time I got to town. I would always see him and he was one of the first men I saw when I got to Birmingham. I do not remember about that product Koke in Atlanta; I heard of it in Birmingham along nine or ten years ago.

Deposition of W. F. Strickland, for Defendants.

W. F. STRICKLAND.

Direct Examination.

W. F. Strickland: my residence is Chattanooga; I am twenty-six years of age and am not in any business at all now. I have been in business but have none at all just now. I was in the near-beer business—that is what it is supposed to be. I have handled soft drinks of several kinds. We handled Koke, Maud Muller, that is a dope, and we used to handle Zimmerman's stuff, Dope, I believe it was; also handled Coca-Cola. The color of these different cola drinks so far as I can see are about the same; they are all black-looking. I have drank some; have never drank it by itself; I have always drank it with something else—drank it in a highball sometimes. These drinks are put up in bottles, the general size, shape and appearance of the Maud Muller [818] bottle and this Zimmerman stuff I spoke of as compared with the size, shape and general appearance of Coca-Cola bottles, all look about alike; sometimes the bottles will blow their names around the top, but most of the Maud Muller bottles are about the same size. When customers ask for dope I give them the first thing I get hold of in a soft drink box. Maud Muller, Dope or Koke, everyone I give the first one I get hold of; it does not make any difference, I keep them all in one box, Koke, Coca-Cola, separate. If a man asks for Coca-Cola I give him Coca-Cola if I have got it; if I have not got

(Deposition of W. F. Strickland.)

it I tell him I have not got it. Koke cost me seventy cents for two dozen bottles. Zimmerman's stuff sixty cents a case, but I have not bought any lately; I do not know what it is now. Maud Muller cost me sixty cents, if I am not mistaken. Coca-Cola cost me seventy cents a case. If a man asks for a Dope or Koke, I give him either one I get hold of, or if he asks for Coca-Cola, I give him Coca-Cola. If I am out of Coca-Cola, I tell him I am out, and he will have to take something else. When a customer comes in and asks for a Dope, I take it for granted that he wants Dope and does not care what it is, just so it is something cold. Some cold, soft drink. If he says to me to give him a Dope or a soft drink I give him whatever I get hold of first. It don't make any difference. I keep it all except Coca-Cola in one box. I just keep a few bottles of each kind, and which ever I get hold of first I give to him. Some of the bottles have a name in them, like Chattanooga Bottling Company, but you have to get up close to read them. They are all the same size, and some might look like a Coca-Cola bottle. The Coca-Cola bottle has Coca-Cola Bottling Company on it. I believe it has on the bottom, *Trade-Mark registered,* or something like that, great big Coca, and another big C and the rest of the letters small. If they ask for the bottle I will show them. Some people want it out of the bottle. They will take it up and look at it, some people do and want Dope, and some people call for Maud Muller, and some say give me a "Koke." Some says [819] that—some says Coca-

(Deposition of W. F. Strickland.)

Cola, which ever they call for, I try to give it to them, if I have not got it, I will tell them I have not got it. When people come in and call for Koke, they want Koke I suppose. Other drinks that I know of are Tru-Cola, Ala-Cola. I have been in the business about two years.

Cross-examination.

I paid about sixty cents for Koke. I give seventy cents for Coca-Cola, and pay sixty cents for Koke. I have known of this product Koke ever since they put it out, something over a year ago. I had calls for dope, a soft drink of some kind, but I did not hear about that Koke before I got it. Some men would come in and say "Give me a Koke, Coca-Cola, Dope or something." That Zimmerman stuff, I believe Dope is the name of it, I am not sure, I don't sell any of that. Dope I am almost sure is the name of it, I would not say positively, is made out here on Carter Street, Chattanooga, Boyce Street, rather, Boyce and Hook.

Redirect Examination.

I never seen any drink aside from this Koke that you speak of advertised or labeled by the name of Dope. That Dope that Zimmerman had, if I am not mistaken, just plain dope on the crown. The Chattanooga Bottling Company used to put out something, I believe, Tru-Cola, it was dope drink.

Recross-examination.

Koke it was in the paper, I believe, it was printed. I do not remember but to the best of my knowledge it has been advertised K-O-K-E. I would not say, it

(Deposition of W. F. Strickland.)

has been advertised somewhere, I am sure. Wher the Bottling Company organized here, the Central Koke Company, if I am not mistaken, the paper said they were going to put out the drink Koke. When it was first organized here, the Koke Company was going to put out the drink Koke, that is to the best of my knowledge. I believe you can find the paper with it in it. That is all I have seen, and I might not have paid it any attention. [820]

Deposition of C. H. Jouett, for Defendants.

C. H. JOUETT.

Direct Examination.

Forty years of age; business druggist; live in St. Elmo a suburb of Chattanooga, Tennessee. I am associated with the Live and Let Live Drug Company. Been with them since April 1, 1914; before that was with the Miller Pharmacy on the corner of Eighth and Georgia Avenue, Chattanooga, Tennessee. At the Miller Pharmacy I was about the fountain frequently and could hear the names people used in asking for drinks they wanted; I occasionally dispensed drinks at the fountain, not often. We handled Coca-Cola, Cola-Nut and Ala-Cola, I think; I don't remember whether we handled any other cola drinks or not. I have known of drinks similar in color, taste and appearance to Coca-Cola I presume for ten or twelve years, probably longer, fifteen years probably. They are alike in color and taste as far as I am able to tell. We got the Ko-Nut in at the Miller Pharmacy in a plain barrel. I don't think it

(Deposition of C. H. Jouett.)

was painted. I may have seen the barrel but I never charged my mind with the kind of barrel it was, or taken any special notice of it. I have been in the drug business since 1896. We used to use other cola drinks. I did not buy them. I do not recollect what the names were. We never substituted those drinks when Coca-Cola was asked for. We always had Coca-Cola and the other drinks both there; have had customers come into the soda-fountain and ask for dope. When they asked for dope, that is left with the dispenser and they give them any cola drink they had. When a customer came into the soda-fountain and asked for a dope I took it he wanted a cola drink. I did not understand he wanted any particular brand of cola drink. I do not regard that word "Dope" as a specific name for any specific brand of cola drinks, and yet I understand there is one cola drink registered under the name of "Dope" too, or at least there is one bottled and on the market under that name. I could not distinguish a glass of Coca-Cola from the other cola drinks that I have known of. I could not tell the difference in color or taste, and personally so far as I am concerned, it would not make any difference so they gave me a cola drink. I never had [821] a customer reject any other cola drink on the ground that it was not Coca-Cola when it was served to him on a request for a dope, or on the ground that it was not what he asked for. At the Miller Pharmacy the syrups of the different drinks they had were kept in dispensing bottles, tanks and pump jars. What I mean, bottles

(Deposition of C. H. Jouett.)

that go down into a counter or fountain and you would have to life the bottle and take the stopper off to pour the syrup out, that was the kind of fountain we had at that time, they were all the same shaped but they were labeled so we would know them, one from the other.

Cross-examination.

I was never a soda dispenser. I have been around the fountain and superintended fountain work and have dispensed more or less soda. At the present I am prescriptionist in the prescription department of the Live and Let Live Drug Store. I had general charge of the business in connection with Mr. Miller, assistant manager of the business. Attended to the prescriptions, too, and waited on the front part when none of the boys were at the fountain I waited on the fountain. There were occasions for me to be at the fountain a good deal of the time. There were two boys, and quite often none of them would be at the fountain waiting on the trade, and I would go, several times a day. I have had a lot of experience. I could dispense soda as well as any man in town; I am not an expert, but I say I can dispense soda as well as any man in town. I have worked with them and have had men to work for me who were expert soda and ice-cream men. I have gained my knowledge from my own experience and observation at the fountain. Cola drinks were similar in color, taste and appearance to Coca-Cola fifteen years ago. I do not recollect, as I said a few minutes ago, the names of the cola drinks, or even to five years ago.

(Deposition of C. H. Jouett.)

I do not know because I didn't bother my mind with it. I think I dispensed it first, to the best of my recollection, it was with the St. Elmo Drug Company. The proprietors there, I think, were Wessenberg and Jones. The best of my recollection it was Ko-Nut. I do not state [822] positively as I do not remember those things. I do not know what the Live and Let Live Drug Company handle. I have been with the Live and Let Live Drug Company since October. I have had no experience in that way there. I was with the Miller Pharmacy I think three and a half years just prior to the time I went with the Live and Let Live Drug Company. This Miller Pharmacy, as I said, handled Ala-Cola, Ko-Nut and Coca-Cola. I presume they were handling it when I went there. Ala-Cola might have been added after I went there, I am not positive about that. They have changed in buying their colas after I went there, that I recollect. I do not know positively, it was there when I left there. They kept Ko-Nut in a barrel, they got it in a barrel. They kept the fountain syrup there with the other syrup in dispensing bottles. The dispensing bottles stay in the fountain. They kept Coca-Cola in the same way, there were no pump tanks to that fountain, they were all kept right there in those containers. I served them out of those containers. I have served Coca-Cola in response to calls for dope. I served a cola drink, sometimes it might be Coca-Cola, when the others were out. As a matter of convenience when I have Ala-Cola, Ko-Nut and

(Deposition of C. H. Jouett.)

Coca-Cola in the jars, I serve either one I feel disposed to. It is like going into a bar-room and asking for a glass of beer; if I do not specifically ask for Hauck's or Budweiser, I get a glass of beer. If I ask for Bud in the bar-room,–they will give me a bottle of Budweiser. If I go into a fountain and ask for a shot, I do not care what he gives me, so long as it is a cola drink. If a customer comes to my store and asks for "a shot" he gets Ko-Nut or Ala-Cola, any cola drink. That has been so at nearly all the places I have been with at fountains. At each fountain where I have been, when they asked for dope, I just gave them any of them, it did not make any difference. I have been the owner of a store at Griffin, Georgia. Not a thing happened to it, it was in 1901, I think, I left Griffin. I sold out the store to the former proprietor, that is, it went into bankruptcy. [823]

Redirect Examination.

When I was at the Miller Pharmacy some gentleman came and said he was the agent of the Coca-Cola Company; I could not say whether or not it was this gentleman here; he said he represented Candler and some law firm in Atlanta, Candler and someone else. He asked for Mr. Miller first time; I think he came in three times; I talked to him, I think, twice; a day or so after the first time he came back and inquired for Mr. Miller again. The last time he was in there he asked for Mr. Miller and I told him he was out. He left his card the last time and said he was stopping at the Patten Hotel and said for Mr. Miller to

come over there and see him, that he was representing this law firm and it would be to his interest to come down there and see him, that he was handling other drinks besides cola drinks. He said he understood Mr. Miller was handling other cola drinks aside from Coca-Cola. He just indicated from what he said that it would be to Mr. Miller's interest to come and see him, that he was representing this law firm. He used the word substitute and said, "I understand that he is handling other cola drinks. I do not recollect that he understood they were substituting other cola drinks for Coca-Cola, but Mr. Embrey in the meantime had come up there and told about his experience.

Mr. HIRSCH.—I object to what Mr. Embrey told.

Well he indicated to me, I gathered that the object of his visit was to wind him up in a contract with the Coca-Cola Company, and to force him from handling other cola drinks, if it was possible. From what he stated and from what I had gathered from outside sources.

Mr. HIRSCH.—We object to what he gathered from outside sources and object to conclusions, and move to strike out his answers about the contract.

Objection overruled and appeal prayed and granted.

I do not remember that he saw Mr. Miller. He did not say anything to me about wanting Mr. Miller to sign a contract to handle Coca-Cola exclusively. I do not know that he did, no more than he wanted to wind him up in a contract. [824]

(Deposition of C. H. Jouett.)

Recross-examination.

My recollection of this gentleman who was representing the Coca-Cola Company is that he left a contract in the store, just like every Coca-Cola contract signed with the various firms, the same matter, to agree to sell their drink, to buy Coca-Cola from Fritts and Weihl. If you sign up to buy from a jobber, to buy Coca-Cola, they wind you up in a contract to buy so much Coca-Cola during the year, through some jobber he might name. These bottle containers at Miller's Drug Store, some of them had glass labels on them, and others had porcelain labels, where the bottles, original bottles, had been opened; we had paper labels marked what they were, so we could tell what was in them. Coca-Cola dispensing bottles were marked Coca-Cola. When a person asked for Coca-Cola it was always served out of that container. I do not know what was in the jar labeled Fan-Taz. It may have been different things. It may have been Fan-Taz in it at one time, and it may have been Coca-Cola in it at one time, or Ko-Nut, or Ala-Cola, sometimes, some weeks some months, it might have been one thing and another time there would be another. I do not know whether there was ever any Coca-Cola in the Fan-Taz jar or not; we kept it in a bottle and different ways. I do not think Ko-Nut was in that bottle, or Ala-Cola. I would not say there was ever Coca-Cola in the Fan-Taz jar, nor would I say otherwise. We had a pump-jar there to use for one of the cola syrups. I do not remember what the jar was

(Deposition of C. H. Jouett.)

labeled. Coca-Cola, in my recollection, was kept in a bottle with Coca-Cola marked on it. I do not know whether there was any Coca-Cola in that Fan-Taz jar on or about November 11, 1913. We usually know where we put this Coca-Cola.

Redirect Examination.

I knew what was in those bottles at the time I served drinks out of them. I had no reason why I should change my mind, that I know of, that in the six years that I served drinks what kind of bottle it was served from, nor where the drinks were manufactured. [825]

Recross-examination.

I knew at the time I served but I do not remember now what was in the Fan-Taz bottle. At the time I think there was a cola drink in the Fan-Taz bottle. If I did not know I asked someone at the fountain what was there. I would not know that Coca-Cola was in there if I did not go down to the Coca-Cola barrel and pour the Coca-Cola in it. I never drew Coca-Cola into the Fan-Taz bottle, to my recollection. I could not say now that I did or did not ever draw anything into that bottle. I would feel no scruples at serving any other drink for a call for Dope if doing business for myself. I never was around the Live and Let Live fountain. I was around Miller's fountain; I might go around there once a day or twenty times a day. Sometimes the porter, and the soda-boys put the syrup in the fountain at Miller's. I would ask the porter or soda-boys, they were usually in hearing of the fountain.

(Deposition of C. H. Jouett.)

I never heard customers ask for Ko-Nut, I have heard them ask for Ala-Cola frequently.

Redirect Examination.

We also had Root Beer up there; it is brown or sugar colored; it is not as dark as a cola drink. We also handled sarsaparilla; it is not as dark as the cola drinks; it is something along the same line only it is not as dark; it is dark, but it is so you could detect the difference. We also handled vanilla flavor. Occasionally it would be the color of the natural syrup and again they would put artificial color with it. They usually used the caramel. The color of this vanilla, the color of caramel is not as dark as a cola drink. I never served Root Beer or sarsaparilla or vanilla flavoring by mistake for Coca-Cola or some of the other cola syrups.

Recross-examination.

I do not know the price of Ko-Nut. I think Ala-Cola costs in small quantities about a dollar and a half a gallon, that is my recollection. I did not buy Ala-Cola. Dr. Boyd used to come in the store; Mr. Miller bought Ala-Cola from him; I just heard him price it. He [826] said about one-fifty, it might have been one and a quarter I do not think it was as low as a dollar. I do not know the price, I have not bought any Coca-Cola myself, personally, since I left Griffin.

Deposition of Luke Pogue, for Defendants.

LUKE POGUE.

Direct Examination.

Thirty-one years of age, engaged in the beer business; in that business ten years. During that time have dispensed soft drinks in bottles. I have dispensed a general line of soda-water, red and white, ginger-ale, Digestol, Coca-Cola, Rye-Ola, Gay-Ola, Ala-Cola, Nerve-Ola, Koke and Gay-Nol. Most all coke drinks have the same color. I could not say as to taste, I am not much of a coke drinker. I have known of these other drinks on the market similar to Coca-Cola about ten years. Customers in asking for the different cola drinks ask for a "Dope" or a "shot," or a "sniff," or different things. When they ask for those things I give them most any kind of a coke drink we have on hand; I mean by coke drink, any that is put up in a black bottle, Koke, Gay-Ola, Nerve-Ola, Coca-Cola, these cola drinks. I have customers come in and ask for coke; I serve them just whatever we have on hand, if they do not specify. If they call for "Koke," whichever way you spell it, we give it to them; if we don't have it, we tell them what we have. The same applies to Dope. In dispensing these drinks we just set up a glass and a bottle to them so they can see the bottle. The name Coca-Cola is on the Coca-Cola bottle. Some of the others have names on the bottle and some don't. There is no way for our customers to know when they come and ask for dope the drink

(Deposition of Luke Pogue.)

they are getting without it is Coca-Cola; Coca-Cola uses their own bottles and these other coke companies, most of them use bottles they pick up, almost all of them, and you may get a case with a dozen different names on the bottles; the Coca-Cola bottles have Coca-Cola on them. I never saw Coca-Cola in nothing but a Coca-Cola bottle. When a customer comes into our establishment and asks for a coke, I do not understand that he has made a definite and specific request on me for Coca-Cola and nothing else. Since we have handled Koke, [827] he is asking for Koke. Before we handled it, some koke drink, most any soft drink. In the beer business it is different from the soda business. Take a fellow who drinks beer and whiskey and wants to get on the "water-wagon," he might want Poinsetta and say he is drinking dope, or soda-water, or anything like that is "dope" with him. The word Dope applies to most any soft drink around bars. I have had customers come in and ask for dope when we served Poinsetta. They do not reject it as not being what they called for.

Cross-examination.

Poinsetta is a different color from cola drinks. The first cola drink I knew, I would not be positive, is Rye-Ola, back some eight or ten years, not before I knew Coca-Cola. Coca-Cola first came out more than ten years ago, I could not say positively when I first learned about Gay-Ola. I cannot say about Nerve-Ola either. I do not know which one has been out ten years besides Coca-Cola. I worked ten years

(Deposition of Luke Pogue.)

ago in a bar and it seems to me it was the first cola out, I think the Chattanooga Bottling Works put it out. I am the proprietor at the Patten Hotel. F. M. Catron formerly owned the bar. Before that the Chattanooga Brewing Company. I think Mike O'Grady had an interest in that. Mr. Mike O'Grady is not a stockholder in the Koke Company that I know of. I am not a stockholder of the Koke Company. I own the Patten Hotel bar now, the Chattanooga Brewing Company has no interest whatever in it. I know Mr. O'Grady when I see him. I do not know how long I have known the drink spelled K-o-k-e. I think I have been handling it seven or eight months, we have been handling so many koke drinks I do not pay any attention to them, I think one is about the same as the other.

Deposition of Dr. H. O. Null, for Defendants.

Dr. H. O. NULL.

Direct Examination.

Forty-nine years of age; live in Highland Park on Union Avenue, Chattanooga, Tennessee. My business is practicing medicine, I conduct a drug-store also. I have been a practicing physician about ten years, I guess, here. I have had a drug-store about nine years. [828] I have a soda-fountain in my drug-store, have had it there during all that time. We have the ordinary line of soft drinks. I do not, of course, stay around the fountain any. I only look after the details of the buisness, occasionally, in case of a rush, anything like that and I am there. I do

(Deposition of Dr. H. O. Null.)

not make a business of dispensing drinks myself. Some call for a little everything now, in the way of drinks. We handle cola drinks, the only cola drinks we have now is Coca-Cola and Ko-Nut. I have handled a number in my time. I have handled Wise-Ola and Luck-Ola at one time, and My-Ola. I have handled Coca-Cola during the time I have had the soda-fountain. We have always handled some other cola drink. We have not handled any line, but some one and sometimes two; in fact, we have had different drinks, I suppose, other cola drinks. The syrup for the different cola drinks come in just ordinary barrels, so far as I have noticed them, all painted red. I do not believe I could tell a Coca-Cola barrel by its color if I did not see the label on the barrel. In fact I do not know that I ever tried to. I do not think I could distinguish it by its color from the barrels in which other syrups have been shipped. I do not think there is any distinction in them. I do not know as I have ever studied the color of these other drinks compared with the color of Coca-Cola, they are all similar, of course there may be a difference in them, I never have studied that feature of them, never have examined them minutely. In a general way they are all similar to each other. The taste of these different cola drinks compared with the taste of Coca-Cola, is very similar, there is some difference in it. I notice myself, I drink Coca-Cola sometimes, in fact most any of them, but I can notice a difference in the taste of them, some of them, not minutely, in a general way there is some difference, which probably would not be

perceptible to the trade, but there is some difference in the taste of them. We keep the Coca-Cola in a tank with a Coca-Cola label, labeled "Coca-Cola" and the other drinks we have no regular label for them, but the fountain has a regular porcelain label for the Coca-Cola [829] jar, and the others we change sometimes, Ko-Nut sometimes, and Dope whichever we have, most generally they call it "Dope" and put a paper label on that, we keep a label on it. My customers use a good many different names, now, I do not know whether it is particularly these cola drinks or not, but they come in and call for "Dope" and "Koke" and "Shot," and "Give me a dose of lead," and everything else, when they use these names I believe it is generally known they want a cola drink. When a man comes into my soda-fountain, a customer, and asks for a Dope or a Koke, I do not understand that he had made a definite and specific request for Coca-Cola exclusively. He has not asked for Coca-Cola. When customers come and ask for "Dope," "Koke" or "Shot in the arm," I serve what we have, if we have Coca-Cola, if we have Ko-Nut, we give them either one of them, or both, if they ask for one and we happen to be short of one at the fountain, we give the others, what we have, when they ask for dope or koke or something like that. I regard the names koke and dope as nicknames for cola beverages as a class. They were just names people have picked up for that class of drinks, that has always been my diagnosis of that class of drinks. I have never had any of my customers refuse any of my cola drinks

(Deposition of Dr. H. O. Null.)

that I have served in response to requests for koke or dope, shot or lead, or anything of that sort, on the ground that it was not what they asked for.

Cross-examination.

I have been handling Coca-Cola at my place of business I presume probably about eight years. I was not carrying Ko-Nut at that time. I don't suppose I have sold Ko-Nut probably more than a year or two. I carried Wise-Ola a number of years ago, probably six years since I carried that. I carried Ala-Cola a little while, I suppose that has been probably three years as well as I can recollect. My-Ola, I carried that about the same time as Ala-Cola. Coca-Cola was the first, when we first opened the fountain. When I first went out there, in fact, there was no business there, the first two years I [830] guess, the fountain was there it was perfectly dead. We did not sell anything, we were out in the "sticks" and did not really pay its way. I did not pay much attention to it at any time I was carrying Coca-Cola by itself, only in the last year or so you might say we paid much attention to these other drinks. Ko-Nut, I think, is a dollar and ten cents a gallon. Wise-Ola, I believe, is about the same, and Ala-Cola, I believe, that was more as well as I can remember. My-Ola I do not remember. I carried Wise-Ola longer than the rest, the others, I think, I had a small keg, maybe twenty gallons of each one. For Coca-Cola I have been paying a dollar sixty-five and a dollar seventy-five. There are many calls for Ko-Nut at my fountain, we

(Deposition of Dr. H. O. Null.)

have quite a trade on it, we use it for both Ko-Nut and for Dope. When we first handled Ko-Nut we advertised it. We put on our fountain, "Drink Ko-Nut." I have never seen it advertised that I know of. I think Wise-Ola was the same way, the Wise-Ola people, they did give us an advertising campaign. I did not use it much, it extended over a period of twelve months, something like that, I expect, when they first introduced it here. My-Ola and Ala-Cola we did not serve but a little bit. We have a container marked Dope, we marked it Dope and put Ko-Nut in that and kept that separate. We keep Coca-Cola in a separate container. When a person asks for dope we serve him either one. When any of those names, koke, or dope, or anything of that sort are called for, we give them either one. Our fountain was located at Ridge Junction, about two miles from the center of town. I handled Coca-Cola alone about the first year or probably a year and a half, in fact we did not have any great fountain trade at that time, it was very little at first, more of an experiment, we were out there in the "sticks" and nothing there. I believe I could tell the difference between the taste of Ko-Nut and Coca-Cola. I expect a man who is in the habit of drinking Coca-Cola would know it very perceptibly. So far as myself is concerned, I do not see much Coca-Cola advertising. I go out of Chattanooga very little. I see lots of Coca-Cola signs on [831] the windows, I would call that advertising. I have no signs on my windows or

(Deposition of Dr. H. O. Null.)

fountain. We do not keep them regular, we keep signs on our fountain at times. We make runs, we advertise different drinks at times, we will put up this week one, and probably next week something else.

Redirect Examination.

Our store is now in the city, the city has built up out there. Our soda-fountain has developed, yet during the winter we do not do but very little, although we are in the city, at the fountain we do very little, but in the summer time and as soon as spring opens up we have a nice trade, you might say from the first of November into the first of March or April we do not have much trade at any time.

Recross-examination.

Our business has grown in proportion as the population has grown around us, I mean in the summer season.

Deposition of J. C. McDonald, for Defendants.

J. C. McDONALD.

Direct Examination.

Thirty-eight years old; live in Chattanooga, Tennessee; lived here since 1889. Engaged in the near-beer business now for myself about six or eight weeks, but I have been tending bar for about five years. Place of business located in the Arcade Alley in Chattanooga. I handle soft drinks in my business. I have Coca-Cola, Sinalco, Poinsetta. I did handle Coca-Cola but not since I have been in business for myself, that has been six or eight weeks.

(Deposition of J. C. McDonald.)

I have got Koke since I have been in business here, when in business with other people we had Coca-Cola for a while. We had Ala-Cola, Maud Muller, Tru-Cola. The color of those drinks compared with Coca-Cola are practically the same things, I could not see any difference in them; no one could see any difference at all. I could not see any difference in the taste compared to Coca-Cola. The drinks I handle are put up in bottles, they are pretty near the same as Coca-Cola bottles, the same general appearance. From its general appearance at a distance I could not tell one from the other. I would not know a glass of Coca-Cola by its color and could [832] not distinguish it from any other similar drink. I could not distinguish a glass of Coca-Cola by its taste from the other cola drinks I have handled. I have known other cola drinks on the market similar to Coca-Cola since I have been tending bar, about five years. I have never seen a cola drink not practically the same color as Coca-Cola and practically the same taste or that was not put up in a bottle of the same general design as the Coca-Cola bottle. I have never seen any Coca-Cola barrels being delivered to soda-fountains around town. I would not know a Coca-Cola barrel if I saw it, I never saw one that I know of. I have customers come into our place of business and ask for dope. When they ask for dope I give them anything I have got in the line of a cola drink. I understand when they call for a dope, no particular brand unless they call for the particular brand. I never had a customer refuse

(Deposition of J. C. McDonald.)

any of the other cola drinks we have dispensed, other than Coca-Cola, when he asked for it as dope, on the ground it was not what he asked for. I have recently seen advertising of Koke, little square signs. I have known the product Koke, I presume, three or four or five months, I could not say exactly. I get Koke from the Chattanooga Bottling Company. Customers do not come and ask for a cola drink by any other name besides those I have mentioned, they say Koke, Dope, sometimes Shot, something like that. I understand they want anything in the cola line and I give them what I have got. I do not consider the name Koke or the name Dope is a specific and definite name for Coca-Cola and no other drink.

Cross-examination.

I have known and handled Koke the last few months. I have known of Coca-Cola ever since I was tending bar, I handled Coca-Cola before Koke came on the market. I most always handled some other drink along with Coca-Cola. I would not give a man a lemon soda if he asked for a dope or a sarsaparilla. I never handled Root Beer. I would not give a man a lemon soda for a Dope drink. I would not say sarsaparilla, I never handled that, I do not know whether they would want that. I put up some Koke advertising, I had two or three signs [833] down at my place. I never saw that advertising anywhere else. (Exhibit 1 to the testimony of Henry Boerger.) That sign had on its *Koks* similar to the way Koke is on this crown. The first cola drink I knew of besides Coca-Cola was Tru-Cola. I suppose that

(Deposition of J. C. McDonald.)

was three or four years ago. I have known Coca-Cola for a good many years, I suppose, for the last ten or fifteen years probably.

Deposition of F. M. Bogart, for Defendants.

F. M. BOGART.

Direct Examination.

Twenty-seven years old; employed at C. P. Embrey's Drug-store; been there since seven years next July. My duties there is all-around man, prescription clerk, and I keep a few books, wait on the soda-fountain some when the man is out. I went there as prescription clerk. I am about the fountain frequently and can hear calls people make for the different drinks they want. We serve Coca-Cola, Ko-Nut, Afri-Cola and Mays-Ola. The syrups for the different drinks come in barrels, the color of the barrels are red, different shades. Coca-Cola comes in red barrels. I do not know as I could tell a Coca-Cola barrel from the other barrels if I couldn't see the label on it, by its color. They are very much the same in taste to Coca-Cola. In making known to me the different cola drinks they want some say "Give me a Dope," "A shot in the arm," "Shoot me." I understand when they ask for those names they want some stimulating drink. I do not understand that they have made a definite and specific request for Coca-Cola exclusively. I do not think these nicknames specify any certain brand of drink. We give them when they call for those different names, just what we happen to have, My-Ola, Mays-Ola, Ko-Nut.

(Deposition of F. M. Bogart.)

We have had calls at our soda-fountain for Coca-Cola. When customers ask for Coca-Cola we serve them Coca-Cola. We do not serve the other drinks when they ask for Coca-Cola. I have never had any of these cola drinks other than Coca-Cola rejected by a customer on the ground that it is not what he asked for, when served in rseponse to a request for "A dope," or "A shot," or "Shoot me" or anything of that kind.

Cross-examination. [834]

Twenty-eight years old, I was just twenty when I started at Embrey's as prescription clerk. I never was a soda-water dispenser there. I started in the drug business as errand boy, soda-water, etc. I was with Harry Wise at that time. Harry Wise is in the drug business at Fountain Square. He has gone out of business. I was soda dispenser there five or six years. I was not a soda dispenser at Embrey's, but I delivered packages, that was a small store, and I had to do everything, they had a soda-fountain in the store, another man at the soda-fountain and I used to fill in when he was not there, and run errands most of the time. They handled most of the phosphates, sodas and Coca-Cola. Rootbeer also, I guess. Just to be frank with you I do not remember whether I ever heard calls for koke or dope, that is too far back. I knew Coca-Cola. I knew about it when I started as errand boy and possibly a little before that time. When people called for Dope, Shoot me, or Shot in the Arm, I just imagine, they want something to stimulate them, dope.

(Deposition of F. M. Bogart.)

Redirect Examination.

I was in Embrey's drug store about a year ago when a representative of the Coca-Cola company came in. I remember when he called. Mr. Pierce is the gentleman (indicating Mr. Pierce). I did not hear the conversation.

Deposition of W. F. Boylin, for Defendants.

W. F. BOYLIN.

Direct Examination.

Twenty-eight years old, reside 1609 Holly Street, this city; engaged in printing business, been engaged in that business eighteen years in Nashville, my father and myself. The name of our printing concern is the "American Label Works." I know J. C. Mayfield, have known him I should say for twelve or fourteen years. We printed for him soon after he came to Nashville, the first time I knew him was with Diehl and Lord, at least he had his office there in Nashville, Tenn. Then he was manufacturing Celery-Cola, a drink, syrup and extract, he was putting on the market. He called it Celery-Cola. It resembled all these cola drinks, as compared with Coca-Cola, you could not **[835]** tell the difference. I drank it, they are all similar, about the same to me. We printed labels for Mr. Mayfield. The first we knew of him was when we printed the labels, Celery-Cola labels, while he was with Diehl & Lord. That label was to put on soda-water bottles. We printed a number of other labels for him. Celery-Cola was the first one we printed and we printed a label

(Deposition of W. F. Boylin.)

called "Vigo," and Blue Ginger Ale, we printed Koke labels for him also. The first Koke labels we printed I should say it was eight or ten years ago, something like that. I do not remember the dates positively. The first we printed for him were to paste on jugs and barrels, with this description, "Mayfield's Dope Manufacturing Company, Nashville, Tennessee," and they had a place on it to write the address, I am not sure, I think. He spelled Koke on that label K-o-k-e. It was a fancy K first and the other letters something like it, not exactly a script, but on that order. We printed Dope labels, I think that was after we printed the Koke labels, I should say about 1903 and '04, something like that. They were for soda-water bottles and then we printed, I believe it was a Koke label for barrels the last time. I think he made this Celery-Cola in both ways, because I think we made labels for him where we would state on there to use so much syrup and so many ounces of extract, and then printed them just to go on the syrup also. He put out this syrup or extract in jugs and kegs, five and ten gallon kegs. I think they were painted red, that is my recollection of it. We printed both ways, a beverage and a syrup to send to bottlers where he sold the extract and to put on bottles, and then labels to put on his containers when he shipped it out. This Koke was a cola syrup, a cola drink. The Coca-Cola and Celery-Cola are like all those cola drinks. I couldn't tell any difference from the other cola drinks. I do not think he used anything but red barrels, I never saw any dif-

(Deposition of W. F. Boylin.)
ferent colors, nothing but red barrels. We printed labels for hundred of people for different cola drinks, Haskell's Cola, at Cookeville, North Carolina, and we printed Koke labels for Kelley & [836] Westmore, at Franklin, Kentucky. And we printed Texa-Cola, Call's Cola for some firm in North Carolina. Fletcher's Cola, a Nashville concern. Diehl's Star-Cola for Diehl & Lord of Nashville. Gerst-Cola for Gerst Bottling Works of Nashville, and we printed Heck's Star-Cola for Heck of Nashville. There were so many of them—I can get you a list of them from the office. I have known of Cola drinks on the market other than Coca-Cola practically ever since I can remember, ever since I have been in Nashville anyway, that will be eighteen years the first of January. The color of all these cola drinks I have seen as compared with Coca-Cola are all practically the same color and taste as compared with the taste of Coca-Cola. I have never seen a cola beverage not the same general color. I have never tasted a cola beverage that did not have the same general taste. I have been around soda-fountains or where they sell these cola drinks in bottles and heard some people ask for coke or dope. When I go into a soda-fountain or place where they sell bottled cola drinks or soft drinks in bottles and ask for a dope, I expect to get a cola drink. If I want Celery-Cola, I know I have got to ask for Celery-Cola, or Coca-Cola. If I go in and ask for "A coke" I expect to get any cola drink. I do not regard the names of koke and dope as specific and

(Deposition of W. F. Boylin.)

definite nicknames for Coca-Cola exclusively. I have heard these words koke and dope, for ten or twelve or fourteen years anyway, fifteen years I should say. They mean any drink, any cola drink, I should say. I regard them as nicknames for cola drinks as a class. Out to the baseball park here in the summer time there is no cola drinks sold there except Diehl & Lord's Star-Cola that is sold in bottles. I have heard them ask for it as "coke" and "dope" and I have heard them ask for Coca-Cola, but the boys tell them they do not have Coca-Cola, but Diehl's Cola. They always have signs out there and have crowns on the bottles the boys bring out in the stand with the name on it. When people ask for dope or coke and are served with Star-Cola, I think they know they are getting Star-Cola.

Mr. HIRSCH.—I object to what people think they are getting. [837]

I have heard it asked for as koke or dope, nearly always in calling for a drink out there I saw, "Give me a coke" or "A cola." I do not think I am getting Coca-Cola when they serve it to me. People in asking for a drink at the ball park by the names koke or dope, can tell they are getting Star-Cola and that it is not Coca-Cola by the crown on the bottle and advertising in the park that Diehl & Lord have exclusive rights there to sell Diehl's Star-Cola. Diehl & Lord have their name blown in the bottle, no label on the bottle except the crown. I do not think I have seen cola beverages put in anything except six and seven-ounce split bottles, most all I have ever

(Deposition of W. F. Boylin.)
noticed are dark brown bottles. If I saw a glass of Coca-Cola served at a fountain, I could not distinguish it from any of the other cola beverages I have seen by its color. I could not distinguish it by its taste because I do not drink but very little. People who drink it all the time might, but I could not. I do not know how the people who make these other cola syrups ship their syrup, what color barrel they ship it in. I do not know the color of the Coca-Cola barrel. We never sold the Coca-Cola Company goods at all.

Cross-examination.

Before I came to Nashville, I lived Mount Airy, North Carolina. I knew about the drink Coca-Cola while at Mount Airy; it was on the market then being sold there. I don't know as I ever did ask for a koke or dope at that time. I lived at Mt. Airy, North Carolina, 'bout a year; I was born and raised in Monroe, North Carolina. My father was in the newspaper business at Monroe. I should say I can remember Coca-Cola as far back as I remember. At these places I lived at before I came to Nashville, I never heard of Celery-Cola, or Blue Ribbon Ginger Ale. I could not say positively I ever heard the name Koke, I might have, I had not heard of the product under that name. I could not swear positively what cola drinks were on the market eighteen years ago, except Coca-Cola. The first time I made up labels for Celery-Cola was about twelve or fourteen years ago. I **[838]** have no way to refresh my memory on that unless I could

(Deposition of W. F. Boylin.)

find those old books where we first charged Mr. Mayfield with them. I do not know whether I can find them or not, because we had a fire and a lot of books were burnt up. It know it must have been fully that long ago because we were in business a little before that time. I think we printed labels for him when he first came to Nashville with Diehl & Lord, twelve or fourteen years ago. I do not think he worked at Diehl's and Lord's, he just made up his syrup there, because they had the plant that he used. The first label for Vigo, for Mr. Mayfield was after he made Celery-Cola labels; I should say that was seven or eight years, or ten years ago. I do not know when Mr. Mayfield first came to Nashville. He got the labels from us twelve or fourteen years ago, if not more, it might have been longer than twelve years, but I do not think it was less than twelve. As soon as we knew him we commenced making up Celery-Cola labels for him. This Blue Ribbon Ginger Ale, considerably after that, I should say, ten years ago we made those labels for him. These Koke labels I spoke about, I will tell you how I am getting my dates. I went to St. Louis, I was over there two years and we made those before I went to St. Louis. I have been back here nine years and that must have been eleven years ago, about eleven years ago we made Koke labels I think to put on packages, shipping out. Jugs and barrels, packages of that kind. We have the cuts to a good many. We have the cuts of Vigo and things of that kind. We have not any cuts of the first Koke label,

(Deposition of W. F. Boylin.)

because that was plain typeset labels, that was just a printed label. We have cuts of labels now, the ones we have there now they were made before I went to St. Louis. We do not make the cuts, we had an artist to draw them and had it made, an electrotype. The electrotype people I could not state positively, because there were three or four firms in town, and we were having cuts made at all of them. The names of these concerns was Kelly Engraving Company of Nashville; Oswald & Sons of Nashville, and then I think [839] there was Jimmy O'Connell. I believe he ran the Nashville engraving Company, O'Connell now has the Capitol Engraving Company. The word "Koke" was a line cut, with some plain black letters, just the plain type, a zinc cut that was made by one of these three concerns ten or eleven years ago. Before that time we had printed the word "Koke" in the label for shipping purposes. That was not very long before we made the cuts for him. We made an engraved label, and he sent it out to bottlers to put it on the bottles that he sold extract to. The others were only made a short time before that. We have no specimens of that printed label made some twelve or fourteen years ago. I have got the cut made for the label to go on the bottles. That is at the office. I could procure it; it will be a little trouble. I will do that. I do not know whether I can find Koke labels or not, we have lost the samples down there. Mr. Mayfield's place of business twelve or fourteen years ago was located in the same building with our

(Deposition of W. F. Boylin.)

office on Second Avenue, just across from Union Street. At that time he was making Celery-Cola. I do not think he ever did any good with Vigo and Ginger Ale, and things of that kind. He made up goods but did not sell it. He made Celery-Cola before Koke. I should say he made Celery-Cola two or three years before he started making Koke. He continued making Celery-Cola while making Koke and sold both products. We made labels at that time for both Celery-Cola and Koke. I may find some Celery-Cola labels, I could not say, we made several hundred thousand Koke labels, but nothing to compare with Celery-Cola. We do not make Koke labels for Mayfield now. We have not had any business with him for several years, we are not doing business with him at all. The sample Koke labels were made between about fourteen years and two and three years ago. I think we made several different kinds of cuts for Koke, and Celery-Cola. I will bring up as many kinds as we have. You know when they get out of date we do not keep them, we destroy them because we have so many. We do not always keep samples of all the labels we make. **[840]** We do for a certain length of time, I should say about three years, and then they accumulate so we destroy them to get rid of them. If we know they are not used any more, we destroy them. I know I have some of Mayfield's cuts. Mr. Mayfield's business some twelve or fourteen years ago was located with Diehl & Lord, and he had his office in the same building, that is, when I left for

(Deposition of W. F. Boylin.)

St. Louis, afterwards, I believe, he had his office in one of the office buildings in town. I think he moved his manufacturing plant to St. Louis after I came back from there. I am not positive about that, because after I came back from St. Louis, I was not connected with him as closely. We did not work for him after he came back from St. Louis. We made up some dope labels for him when we were making up Celery-Cola, Blue Ribbon Ginger Ale, Koke and Dope. I might have some cuts of the dope labels made by the same firms. I am not sure when we made these dope labels, but they were made along about the same time. It might have been a few months difference or a few weeks. We made Celery-Cola, Dope and Koke labels for him, but more of Celery-Cola. His manufacturing plant was at Diehl & Lord's, once, and in some place on Second Avenue, I could not say where else. I do not know whether Mr. Mayfield went to St. Louis after I came back here or not, he had a fellow, Van Deusen, making his Koke, but where he was making up his goods I do not know. I never went to his plant in St. Louis, I know we shipped goods there. I know we printed labels for him after I came back and he was having goods manufactured in St. Louis. I think we have made different kinds of labels for Mr. Mayfield up until last year, Dope, Koke and Celery-Cola. He has not manufactured in Nashville for several years, since he commenced at St. Louis, not to my knowledge. We were sending those labels to different points where he was in business.

(Deposition of W. F. Boylin.)

We sent some to Dallas. New Orleans was the last. It was about two years ago when we shipped to New Orleans, that was the last shipment we made to Mr. Mayfield at all. They were shipped to J. C. Mayfield, New Orleans, Louisiana. I do not remember what **[841]** address. I could not tell when I ordered Coca-Cola that a man was serving me Coca-Cola or some other drink. In fact I drink very little. If I ask for a dope or a koke I do not expect to get Coca-Cola, I expect to get some other product and not Coca-Cola. I do not remember as I ever asked for dope or some *some* fifteen or sixteen years ago. Dope or koke may apply to Coca-Cola. If I called for dope or a koke I might get Coca-Cola and might get something else. We made up a label for Texa-Cola also, I do not know when. They were engraved labels, I have some of them and of Cole's Cola. That was for a North Carolina concern, I do not remember the place. I have the engraving of that. We made up Texa-Cola five or six or seven years ago. And Cole's Cola that was seven years ago, it may be longer and may be less. And Fletcher's Cola, we never made that until two or three years ago. We have not made any for some time for the firm has been bankrupt. We have the engraving of that, I have no cuts but they can furnish labels. This Diehl's Star-Cola, we have those made from engraving too, we have cuts and specimens of that. Gerst's Cola, that is made here. We made Gerst's for him when he first went into the bottling plant, a good while ago. When they first opened the

(Deposition of W. F. Boylin.)

bottling plant I heard the words dope and koke for fifteen years ago, anyway. I was living at Nashville when I first heard of the words. I would not swear to having heard of it for fifteen years. I made Koke labels for the people at Franklin, Kentucky. This Diehl & Lord's bottle they have the name blown in the bottle on the side about middle ways down. "Diehl & Lord, Nashville, Tennessee," blown in the bottle. The name of the drink is just on the crown. At the ball park the boy pulls the crown and hands you the bottle. I knew J. C. Mayfield fourteen or fifteen years, just here in Nashville. The first I knew of him he was making Celery-Cola but not Koke. That was all he was making then to my knowledge. I have been about his place at Diehl & Lord's. I do not know about his personal business, but I have been to Diehl & Lord's. We were in the label business. **[842]**

Deposition of Adam Diehl, for Defendants.

ADAM DIEHL.

Direct Examination.

Seventy years of age; reside at Nashville; lived here fifty years. Engaged in bottling business. We have been bottling soda water for forty-seven years; have bottled sarsaparilla and Root beer. The color of these drinks is caramel color, the same color as Coca-Cola. We color those drinks with burnt sugar coloring, caramel coloring; we use caramel coloring because it is less injurious. We have been putting out those drinks, sarsaparilla and root beer

(Deposition of Adam Diehl.)

for forty-seven years, and both have been the same color all that time. We manufacture a cola drink, Star-Cola, we have been putting out that drink about fifteen years, we make syrup for the making of the drink, we sell it to soda-fountains and bottlers, advertised around town and all over the United States, in the Bottler's Gazette, and that is supposed to go to every bottler in the United States. Around in Nashville we have advertised it on billboards, daily papers, programs, these slides in picture shows. Star-Cola is sold at the Baseball Park exclusively. We have a large sign right opposite the grandstand, which shows "Diehl & Lord's Star-Cola and Pepsin, sold exclusively on these grounds." Then we have ten or fifteen boys taking it through the audience, and they have it on their buckets and printed across the face of their caps, and then the boys are all instructed, and which they do, when they go selling it. "Diehl & Lord's ice-cold Star-Cola and Pepsin and Digestol," the three drinks we sell there. We advertise also on the program. We advertise our drink as sold exclusively at the ball park, we make that our specialty in the advertising. Customers say "Give me a dope," "Two dopes" "A Pepsins Nut" or "Digestol," if there is four, some call for "Star-Cola" and some say "Give me a bottle of Cola." When they ask for dope, Star-Cola is served. They know when they ask for Dope and are served Star-Cola that it is not Coca-Cola, by the boys calling "Diehl & Lord's Star-Cola," by the advertising on the sign too, and by the advertisement

(Deposition of Adam Diehl.)

I have put on the program that Star-Cola is sold exclusively **[843]** on the grounds. On the bottle is "Diehl & Lord's Star-Cola." The crown has also "Star-Cola" on it. The label is blown in the glass. When a customer asks for a dope I understand that he wants any cola drink. I do not regard the name dope as a specific and definite name for Coca-Cola exclusively. I would take it from experience, my experience has been when they call for dope they want ours, or whatever we have got, when they want a cola drink, they will say "Give me a dope" or "coke" some nickname of that kind. If a customer came into my place of business and asked for a dope, I would understand he wanted a box of cola drinks. There are forty or fifty other cola drinks on the market to-day that I know of, I could not mention them all. I have known of cola drinks on the market I suppose twenty-five years. They are all about the same color as Coca-Cola. All cola drinks have the same taste with some little difference, but there is a similarity amongst them all. We have shipped syrups in red barrels. When we were doing all of our own painting we painted them red, because red paint was the cheapest. We got Digestol and other drinks, Jersey Creme, and things like that frequently in red barrels. I would know a Coca-Cola barrel by the head, they have a large paper label that they paste on the head of the barrel, but I would not know a Coca-Cola barrel by its color, because all reds look alike to me. If there was no label on the barrel, I could not tell the Coca-Cola barrel from any other

(Deposition of Adam Diehl.)

barrel. I have never seen a cola product not the same general color of these I have spoken of. I have never tasted one not the same general taste as ours.

Cross-examination.

I put Star-Cola on the market for the first time about fifteen years ago. There were eight or ten or fifteen cola products at that time. They were Celery-Cola, I could not tell, I could not name all of them now. I do not remember just what they did call them those days, but the drummers would be in continually with different colas, trying to sell them. Coca-Cola was on the market then. I have known Coca-Cola **[844]** ever since it was introduced into this market. I do not remember how many years ago that was. One of the earliest cola drinks that we handled was Mayfield's Cola, that was before we commenced putting up Celery-Cola. That has been sixteen or seventeen years ago. Mayfield's Celery-Cola, we were bottling it. I could tell you the first one I ever bought by referring to my books and looking up the old advertisements in the old books. I do not think we have any, but by going back to the Bottler's Gazette those times, you could get it. Which was the first I do not know, Mayfield claims that he made Coca-Cola before Coca-Cola, that is all I know.

Mr. ROGERS.—I move to strike the answer as hearsay.

Objection overruled and appeal prayed and granted.

The "Bottler's Gazette" goes to all bottlers, it is

(Deposition of Adam Diehl.)
a trade paper. We wanted a cola drink, we had been bottling Mayfield's Cola, and there was a chemist by the name of Duke Bashford, and he taught my son to make the different extracts that we used in our business, and amongst the drinks he gave us a receipt for a cola drink. That has been ever since we have been handling Star-Cola, and from that time we quit bottling Celery-Cola, Mayfield's Cola, and bottled our own, under our own name. I have been using the same formula ever since, the same receipt from Duke Bashford, they have added something to it since, my son has. What was added to it and when I do not know. Two or three years or longer than that, he has been experimenting after he got Bashford's recipe, he kept experimenting himself along that line until finally he got something that satisfied him that suited his taste. It is a cola flavor. I do not drink any cola at all, I have tasted it. It has been years, three or four or five. I drank Coca-Cola at times, but I have quit drinking it several years ago. I have known their advertisements, "Koke Company of America," in the "Bottler's Gazette." There are four or five trade papers, the "Southern Carbonator," I think I have seen it in one of them, or maybe all of them. I have seen their advertisements of the drinks under the name of "Koke" and "Dope." **[845]** When I talk about "Koke" I mean the product of the Koke Company of America. When I talk about Dope or Koke either, it usually refers to a cola drink with me. It does not mean any special one, when I saw Koke or Dope, it would

(Deposition of Adam Diehl.)

mean with me as a bottler, if I was going to bottle the stuff and wanted Koke, I would call for "Koke Syrup" but the general public when they are at the parks, for instance, they would call for Dope that would mean they want a bottle of cola. I have hear them call it Koke, and Dope. That is what they mean down there, we only sell three drinks, and when they call for Koke or Dope, the boy knows he means a cola drink. I am not now actively in charge of our place of business. I have been in charge of it up to five or six years ago. I never to my knowledge bought any Coca-Cola barrels from a party named "Fox" and used them without repainting them. The boys are all instructed when they call for "Coca-Cola" to tell them they have no Coca-Cola, but have Star-Cola. We instruct, them that way because we want to advertise Star-Cola, and then we do not want the public to be deceived. All cola drinks look alike. I want the public to know they are drinking Star-Cola. This Star-Cola has been advertised all over the United States in Bottler's Gazettes and by circulars, to the bottlers. We also advertise in the Druggist's. There is hardly a State in the Union that we do not sell some. There is a billboard in Nashville that has a sign of Star-Cola on it, in the park, that is the only one. We had several around one year, we put up twenty-five or thirty in Nashville and on the pikes leading into Nashville, seven or eight years ago. We advertise in the "Tennessean" this past year. I could not tell how long. Those circulars sent out for bottlers, I do not know whether

(Deposition of Adam Diehl.)

we have any or not. The program at the park is the program I referred to, and they frequently have entertainments in which they get up part of the expense by getting advertisements on the programs at the theatres, sometimes, at festivals. The Bijou, the Vendome and picture shows. These billboards, picture shows, theatres, programs, all in Nashville. I do not **[846]** know whether my son has ever expended any money in advertising where we have bottlers that bottle Star-Cola or not. Caramel coloring is the least injurious, and that is the reason we use caramel coloring. It is sugar. I know that there are certain colors that are allowed to be used in soft drinks by the Government. They are not injurious not those, they are more expensive, all of them are more expensive, I am certain of that. Red paint was less expensive than any other kind, that was our experience. I never inquired for yellow material. The painter told us that red paint was the cheapest at the time.

Mr. ROGERS.—I object to the answer and move to strike that part of the evidence out as hearsay.

Objection overruled and appeal prayed and granted.

The advertisement in the Vendome Theatre advertised Star-Cola. It might have advertised Budweiser Beer; we had it and Star-Cola in there. We sold Budweiser Beer. If a man came up and would say "Give me a bottle of Bud," I think he wanted Budweiser. They did while Budweiser was being sold; it was a common thing to have people ask for

(Deposition of Adam Diehl.)

a "Bottle of Bud." I remember Coca-Cola since I remember any of them. I remember Coca-Cola before I sold Celery-Cola. I remember Celery-Cola, I think, twenty-five years ago. I won't be positive about the dates, right off-handed. I could not tell you. It may have been that I knew Coca-Cola before I did Celery-Cola. I have been manufacturing Star-Cola for fifteen years. I never bought anything from Hicks. Hicks gets out a Star-Cola. Advertisements of Diehl & Lord's Star-Cola, you will see it all around town in numerous places, but I do not know what my son has done nor the advertising man, to these bottlers that he has supplied. I have seen him shipping it out and shipping advertising matter to our people who handle our goods. I do not know whether it is put up or not. I do not know where any of these bottling plants are located.

Redirect Examination.

I cannot approximate how much I have spent in advertising Star-Cola. We did not spend a million and a quarter dollars a year plastering [847] the United States with advertisements of Star-Cola because we have not got the capital.

Deposition of John D. Fletcher, for Defendants.

JOHN D. FLETCHER.

Direct Examination.

Mr. Fletcher: Before they begin I want to state that I am not here at my own free will; I would not have come down here but for the fact that a United States Officer stated over the phone that he

(Deposition of John D. Fletcher.)
had a subpoena for me. I had been telephoned to this morning to know whether I was coming or would be here, and I did not intend to be here. I want that distinctly understood; this is no fight of mine, Mr. Hirsch, and furthermore than that, I am not here for the purpose of wanting to give any information on my own account whatever. My age is fifty-three years; reside Nashville, Tennessee. Lived here about fifteen or sixteen years; engaged in manufacturing carbonating syrup. Make syrup for soda-fountains and bottling purposes. It is a coca and cola flavored syrup. It is ordinarily known as cola syrup for making a cola drink. It is very similar to the color of Coca-Cola and very similar in taste to Coca-Cola. I have been engaged in this business about four years. The name of my product is "John D. Fletcher's Carbonating Syrup with a Genuine Coca and Cola Flavor," that is in syrup form, but we call it "John D. Fletcher's Carbonated Syrup, with a Genuine Cola and Coca Flavor" after it has been bottled and carbonated. We sell exclusively in the states, by-states, and by that name, as we are trademarked in the various states, and are using the name only in intra-state commerce. In shipping my syrup we ship it in barrels and kegs; they are usually red; I buy a great many Coca-Cola barrels, old, second-hand barrels. We paint our barrels that color because in the first place it is cheaper, I reckon, in the second place, the color of the barrels that nearly all syrups are sold in, red barrels. All syrups I have seen on the market, ex-

(Deposition of John D. Fletcher.)

cept Gay-Ola, I think probably they have had to change their barrel's color on account of some court decision. Customers ask for my product at the soda-fountains as "Cola," "Koke" and "Dope." I have heard [848] these words koke and dope. I do not know that I could say that I have paid any very great attention to it, only in the past few years, probably. I do not know that I have paid particular attention to it. Since the last four or five or six or seven years, probably. It may have been longer than that, but I do not know. The word "dope" means to me that they want a caffeine drink flavored with coca and cola flavors. The word Koke means the same thing. If a man asked me to take a dope with him I would naturally think it was a caffeine drink, whether it was Coca-Cola, Gay-Ola, Rye-Ola, my own drink or someone else's. I do not think the public would care what it was, whether one or the other, so they got a drink that satisfied their palate, and was strong enough in caffeine to feel it, you might say. I know of others on the market, cola beverages, probably a dozen or more. They are all the same color as Coca-Cola, all that I ever saw. There is a similarity in taste to Coca-Cola, they all have pretty much the same general taste. We color our drink with caramel. It is cheaper than anything else and it is permitted under the law, under all of the states, without having to put "artificially colored." It is not a deleterious coloring at all, and it makes a beautiful red colored drink. I do not think in the color of barrels, that that is any in-

(Deposition of John D. Fletcher.)

dication of the syrup or drink at all, those colors. In the first place, it is probably as I say, probably a cheaper coloring than anything else, and I do not know of anything else that would take the place of caramel coloring. My chemist, that I had with me for several years, never used anything else. The people were putting that color in it when I bought it out. I bought my drink from a man named Murphy, J. C. Murphy. He first called it Murphy's Cola, in June, 1910, and on the 26th day of September of that year he called it Murphey's Coca-Cola, and I bought it out, Celery-Ade Company, of which he has had the controlling stock and of which I had a considerable amount of money in, in the Celery-Ade Company, and he also owned the Nashville Syrup Company at that time and was selling Murphey's Cola first and then Murphey's Coca-Cola [849] second, by the Nashville Syrup Company, but I did not know anything about the business, Murphey's Cola, or Murphey's Coca-Cola, but was trying to save the money I had put into the Celery-Ade Company, and my partner and myself offered to buy his interest in the Celery-Ade Company which he refused to sell us—he refused to sell us his interest in the Celery-Ade Company without selling the Nashville Syrup Company, carrying with it Murphey's Coca-Cola, and I bought it from him in February, 1911, some six months after he had been calling it Murphey's Coca-Cola. However, I bought both companies, the Celery-Ade Company and the Nashville Syrup Company and of which the two to-

(Deposition of John D. Fletcher.)

gether cost my partner and myself in the neighborhood of twenty to twenty-five thousand dollars in money and property. That is how I come to be in the business. I do not consider the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. I mean I am using as a basis for that, in their advertisements, when they say to call for Coca-Cola by its genuine name, nicknames encourage substitution, that is what I base it on. Our product is also put out in bottles, seven-ounce, brown-stock bottles. I sell to bottlers, and they put it in what they have. They can put it in red, black, white, any color bottle they please. They have their own stock colored bottles. I have known bottles of that class all my life, I reckon, brown bottles. I have known of other drinks being put up in bottles of that kind. I have never seen a cola beverage not the same general color. I have never tasted one not the same general taste as Coca-Cola. My beverage is similar to it. I do not think I ever saw a beverage not put up in a bottle of the same general appearance and size as the one in which Coca-Cola is put up. Those bottles, the color and taste of the drink are common to the trade. In the first place I think the public want the stimulation of the caffeine, because I think if it did not have the caffeine or the stimulating features of the caffeine they would not want the drink at all, and would not care about it. The second is that I think that the fluid extract of the cola and coca in it give it a peculiar aromatic flavor and taste that nothing else [850] does, and it is only

(Deposition of John D. Fletcher.)

that, I think, that causes me—I only speak for myself on that—specifically, to want that peculiar drink, is that my palate calls for that peculiar taste and flavor of the drink coupled with, of course, the stimulating features of the caffeine.

Cross-examination.

I have had some experience with the soft drink business. I have had four years experience, a variegated experience. I am not an expert in this business. I am familiar with the names used at the soda-fountains in asking for these drinks. I am familiar with the effects of caffeine. I know something about it. I am not thoroughly conversant with this caramel. I know caramel is used for coloring. I only accepted the formula that I bought, and what my chemist had done, and I knew it was not prohibited by the pure food and drugs act, national or state. I know caffeine is a stimulant, I got that knowledge from drinking it. Coffee and tea has stimulating effects for me also. I do not know anything about the comparison of the quantities of the caffeine in coffee and tea to the caffeine in my drink, only what my chemist swore, Dr. Hallett. That was in the Chattanooga trial; I have not studied that record very carefully; I saw it in the newspaper. I make a drink that has caffeine in it. The formula of Murphey's cola was made by J. S. Pemberton, I suppose. That probably would be absolutely true, but I do know the formula I used subsequently, afterward was sworn to by Mrs. D. Brown, as having been the original J. S. Pemberton formula. Mrs.

(Deposition of John D. Fletcher.)

Brown, I understand she is dead, she afterward married a man in Birmingham. I never met her in my life. I understood that she was married to J. C. Mayfield; she is supposed to be the same woman. I got my information from an affidavit, that the formula I bought from Mr. Romine, of Pulaski, in the year 1905, I believe it was 1905, he bought the formula from Mrs. Brown who swore in that transaction to the affidavit she presented in the litigation that I had with the Coca-Cola Company as having been the original Coca-Cola formula as put up by Mr. Pemberton in the preparation of Coca-Cola. [851] (Affidavit of Mrs. Brown.) "United States of America, State of Louisiana, Parish of Orleans, City of New Orleans. Personally came and appeared before me, the undersigned authority, Mrs. D. Brown, who, after being duly sworn, deposes and says: That this is the original Coca-Cola formula, owned and used by her before it was sold to the present Coca-Cola Company, of Atlanta, Georgia." Now just a second, will you—I stated that this was the formula that had been used by J. S. Pemberton. This formula that Mrs. Brown sold to Mr. Romine, now that was only the affidavit, but this was Mrs. Brown's statement contract, with the affidavit which went with the formula.

Mr. LITTLETON.—I want to enter an objection that—to the affidavit that has been read from, and to any statements that any one made who said he heard what Mrs. Brown said, on the ground it is hearsay and incompetent and on the ground that the

(Deposition of John D. Fletcher.)

original affidavit is not presented, and move to strike the question and answer.

Objection overruled and appeal prayed and granted.

This Mrs. Brown's statement to Romine, in which she says—(Reading:) "W. B. Romine, being duly sworn, deposes and says: and goes on to say—About fourteen years ago, I was one of the members of the J. S. Pemberton Med. Company, of Atlanta, Ga.; the firm consisted of D. J. S. Pemberton of Atlanta, Georgia, Mr. Murphey, of Barnesville, Georgia, (a brother-in-law of Judge Simmons, of the Superior Court of Georgia), Mr. Bloodsworth of Barnesville, Georgia, Mr. Mayfield of Atlanta, and myself. Dr. Pemberton put in the formulas of Coca-Cola, Pemberton's French Wine Coca, Indian Queen Hair Dye, Lemon and Orange Elixir, Globe Flower Cough Syrup, etc., into the firm and each of the other members of the *first* put in a certain sum of money. Mr. Murphey did the advertising, Mr. Bloodsworth the book-keeping, Mr. Mayfield and myself the manufacturing. Dr. Pemberton, who was in very poor health, superintended the manufacturing, when well enough. There was very little demand for Coca-Cola at the time, and when Dr. [852] Pemberton's only son, Charlie Pemberton, claimed Coca-Cola, we gave him the name and we used the same formula and put up a soda-fount syrup and called it Wine Coca. Charlie Pemberton afterwards told me he sold his formula and name Coca-Cola to the present owner, A. G. Candler, of

(Deposition of John D. Fletcher.)

Atlanta, Georgia, for Five Hundred Dollars. None of the Pemberton Medicine Company, except Dr. Pemberton, who was not a practical business man, had any experience in the patent medicine business, and when Dr. Pemberton died, soon after, we gave the business up, and divided the formulas. Mrs. Pemberton took the Indian Queen Hair Dye, which she afterwards told me she sold to the Walter Taylor Company, of Atlanta. Mr. Murphey and Mr. Bloodsworth each took formulas, and Mr. Mayfield and myself took Wine Coca,—in both tonic and syrup form. Mr. Candler, who was at that time in the wholesale drug business, began advertising Coca-Cola extensively, and it proved such a good seller that two years afterwards, Mr. Mayfield, Mr. J. T. Tady of West Point, Georgia, and myself, formed the Wine Coca Company of Atlanta, and used the original Coca-Cola formula, and called our syrup Wine Coca. For a year or so I remained in the office doing part of the manufacturing, correspondence, etc., and afterwards, for four years, introduced and sold the goods on the road, and when I left the Wine Coca Company, about eight years ago, we sold more goods in some of the southern states than did the Coca-Cola Company, especially in Mississippi, Louisiana, Alabama, and part of Georgia, and every soda-fount in Atlanta, with possibly two exceptions, were selling Wine Coca, in good quantities. The Wine Coca Company is now owned by Boston parties, with headquarters in Boston, Mass. This is the true story of Coca-Cola, and Wine-Coca. I never

(Deposition of John D. Fletcher.)
sold my rights to either the Coca-Cola or Wine-Coca Company." "Mrs. D. Brown."

That was part of the record in the case of Coca-Cola Company vs. Atlanta—I mean Nashville Syrup Company of Nashville, Tennessee. That was her written statement in the sale of that formula to Mr. Romine, accompanied with her affidavit and it was exhibited as a part [853] of the transcript in this particular case, by agreement.

Mr. LITTLETON.—I wish that same exception and motion to strike that which he has just read, be entered.

Objection overruled and appeal prayed and granted.

Caramel, so far as I know was the cheapest and it was not prohibited by either national or state pure food and drugs act that I had ever heard of. I know the United States possibly allows fruit colorings in other drinks, not of this class, however. Nothing will take the place of caramel colorings that I know of in price or in anything else. I buy old Coca-Cola barrels very frequently, they are on sale here. I buy a good many from Mr. B. J. Fox, who buys all the barrels he can. I do not buy them, however, because they are Coca-Cola barrels. We paint them over, not the red color of Coca-Cola, we usually paint them red. I would not know a Coca-Cola barrel by the red color. I did not know the Coca-Cola Company specifically had a patent or trademark on the color of their barrels. I never had heard of it. I buy the very cheapest paint I can get. I testified

(Deposition of John D. Fletcher.)

that dope now is used by the public at soda-fountains in calling for a caffeine drink, flavored with coca and cola. I put that "now" to it, because when I first knew the drink I never knew it to be anything else on earth except Coca-Cola, absolutely nothing, I never heard of the words koke or dope in my life until other drinks had been put upon the market and sold in competition to Coca-Cola, and that has been only in the last few years. I have known Coca-Cola for twenty odd years I suppose. I swore to the answer in the Nashville Syrup Company; in the case of the Coca-Cola Company of Atlanta, Georgia, against the Nashville Syrup Company of Nashville, Tennessee. I am John D. Fletcher, President of the Nashville Syrup Company. This was part of my answer and I swore to it. "Defendant avers and says that shortly after the preparation of Coca-Cola syrup and extract was put upon the market by J. S. Pemberton, for brevity's sake, the words Coca-Cola syrup and extract were contracted by the users and consumers of it, first, to the words "Coca-Cola" [854] then, to the words 'Coke' or 'Koke,' and finally, the product of J. S. Pemberton was styled 'Dope,' the consumers throughout the country believing the preparation or beverage to contain cocaine, the word 'Dope' denoting to the layman generally cocaine." Words Dope or Koke had never attracted my attention until other drinks had been put upon the market in competition with Coca-Cola and I do know of other drinks having been put on the market nineteen years ago. A drink I knew on the

(Deposition of John D. Fletcher.)

market at that time was Afri-Kola, approximately I will say nineteen years ago. I can positively say that they advertised it as having been on the market that long, I do not know of my own knowledge. I saw advertising of Afri-Kola in trade-sheets. Afri-Kola is on the bottle crown. As an extract I cannot say that he does advertise it as an extract except through the trade journal, bottling papers, but on his crowns, like I have—and they apply, however, to everyone else, they have Afri-Kola on the crown of the bottle in which his drink is put up, and it is used as an Afri-Kola beverage. (Excerpt from the Coca-Cola Company of Atlanta, Georgia, against the Nashville Syrup Company.) "By recent decision of the United States Supreme Court, the corporation owning and distributing Coca-Cola has been denied the right of sole proprietorship of this well-known name." We denied positively any knowledge of that whatsoever. Denied it then and deny it now, and it was so accepted. I said the Coca-Cola people advertised to ask for Coca-Cola under its right name, the genuine name, or ask for Coca-Cola by its true name, that nicknames encourage substitutes. I do not know what nicknames you referred to, I suppose any nickname except Coca-Cola. That is in every street car in the country, I reckon, I have seen it all over the land.

Redirect Examination.

That answer I put up in that case, Coca-Cola Company vs. Nashville Syrup Company was sworn to on information and belief.

(Deposition of John D. Fletcher.)

Mr. HIRSCH.—We are going to ask that we be allowed to put in as Exhibit No. 1, to the testimony of Mr. Fletcher, the certified copy [855] of the answer. We have not got it right now and you can save any objection you want to, what I mean, we have not got it right now, but offer it in evidence, a certified copy of the answer of the Nashville Syrup Company in the case of Coca-Cola Company vs. Nashville Syrup Company in the United States Circuit Court of Appeals No. 3,676, as Complainant's Exhibit No. 3.

Mr. LITTLETON.—We object to that, first because the facts were brought out that this answer has no relation to the first examination of the witness, and the plaintiff has made the witness their witness on the points referred to, and cross-examination on those points is improper; and the Exhibit is objected to because incompetent and irrelevant.

Objection overruled and appeal prayed and granted.

Deposition of William F. Davis, for Defendants.

WILLIAM F. DAVIS.

Direct Examination.

Forty-six years of age, reside Nashville, Tennessee, since 1890. My company owns some drug-stores, the Davis Fuston Drug Company. I have an interest in those drug-stores. Our company own five retail drug-stores, have soda-fountains in all of them, dispense soft drinks from all of those soda-fountains, nearly everything that is offered for sale at soda-

(Deposition of John D. Fletcher.)

market at that time was Afri-Kola, approximately I will say nineteen years ago. I can positively say that they advertised it as having been on the market that long, I do not know of my own knowledge. I saw advertising of Afri-Kola in trade-sheets. Afri-Kola is on the bottle crown. As an extract I cannot say that he does advertise it as an extract except through the trade journal, bottling papers, but on his crowns, like I have—and they apply, however, to everyone else, they have Afri-Kola on the crown of the bottle in which his drink is put up, and it is used as an Afri-Kola beverage. (Excerpt from the Coca-Cola Company of Atlanta, Georgia, against the Nashville Syrup Company.) "By recent decision of the United States Supreme Court, the corporation owning and distributing Coca-Cola has been denied the right of sole proprietorship of this well-known name." We denied positively any knowledge of that whatsoever. Denied it then and deny it now, and it was so accepted. I said the Coca-Cola people advertised to ask for Coca-Cola under its right name, the genuine name, or ask for Coca-Cola by its true name, that nicknames encourage substitutes. I do not know what nicknames you referred to, I suppose any nickname except Coca-Cola. That is in every street car in the country, I reckon, I have seen it all over the land.

Redirect Examination.

That answer I put up in that case, Coca-Cola Company vs. Nashville Syrup Company was sworn to on information and belief.

(Deposition of John D. Fletcher.)

Mr. HIRSCH.—We are going to ask that we be allowed to put in as Exhibit No. 1, to the testimony of Mr. Fletcher, the certified copy [855] of the answer. We have not got it right now and you can save any objection you want to, what I mean, we have not got it right now, but offer it in evidence, a certified copy of the answer of the Nashville Syrup Company in the case of Coca-Cola Company vs. Nashville Syrup Company in the United States Circuit Court of Appeals No. 3,676, as Complainant's Exhibit No. 3.

Mr. LITTLETON.—We object to that, first because the facts were brought out that this answer has no relation to the first examination of the witness, and the plaintiff has made the witness their witness on the points referred to, and cross-examination on those points is improper; and the Exhibit is objected to because incompetent and irrelevant.

Objection overruled and appeal prayed and granted.

Deposition of William F. Davis, for Defendants.

WILLIAM F. DAVIS.

Direct Examination.

Forty-six years of age, reside Nashville, Tennessee, since 1890. My company owns some drug-stores, the Davis Fuston Drug Company. I have an interest in those drug-stores. Our company own five retail drug-stores, have soda-fountains in all of them, dispense soft drinks from all of those soda-fountains, nearly everything that is offered for sale at soda-

(Deposition of William F. Davis.)

fountains. We dispense cola drinks, some drinks are Coca-Cola, Afri-Kola, Fletcher's Cola, Alicola, Arrow-Cola, I believe, it is, Star-Cola, Gerst's Cola, not all of those at every place, at different places at different times; we have used those cola drinks. I knew of other cola drinks besides Coca-Cola before 1909. I exercise a general supervision over these stores. I can hear the names our customers use in asking for the drinks they want. I frequently hear customers come in and ask for a koke or a dope. My instructions to the men are to sell the drink they think will give the best satisfaction. I do not instruct them to sell any particular brand of drink when a customer asks for a koke or dope. We give the one that has given the best satisfaction in the neighborhood, that is sometimes not the same drink in different neighborhoods. When customers come in and ask for [856] a Koke or a dope at our fountain, we do not understand they are making a definite and specific request for Coca-Cola exclusively. Koke, as I understand it, is a specific name more than dope is, that is for a Cola drink made and furnished through this territory from Chattanooga. Cola drinks on the market to-day—there are hundred coming in everywhere, some have been on the market for several years. I could not tell you how many. The color of these different cola drinks compared with the color of Coca-Cola is not much different, the taste in many cases is almost indistinguishable, and in other cases there is a noticeable difference. The Fletcher Cola is, I think, probably more distinguish-

(Deposition of William F. Davis.)

able than most any other that we have dealt in to any great extent. These different cola drinks we buy sometimes in barrel lots, sometimes in half barrels, and occasionally in five-gallon containers. The color of the barrels the different drinks come in is a muddy reddish color. I do not think we ever had anybody reject any of the Cola drinks we served when they asked for them as Koke or Dope on the ground that it was not the drink they asked for. Occasionally customers who come into our store and ask for drinks as Koke or Dope, and indicate to us the particular brand of drink they want. I think probably here Fletcher's Cola is called for maybe more than any other except Coca-Cola. Coca-Cola is called for more than any other drink. When a distinguishing name is used do not remember a customer call for Dope and indicate they want Fletcher's Cola. I do not regard the names Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. I regard them, particularly dope, as a common name to a class of drinks, the caffeine or cola drinks. When a man comes into our establishment and asks for a Kope or a Dope, and is served with Star-Cola, Fletcher's Cola, or any other cola drink at our fountain, I consider that we are giving him what he is asking for. I believe we ought to sell the Koke when he calls for Koke, and by Koke I mean the product that comes from Chattanooga, Tennessee.

My profession is a practicing lawyer. I spend my time after supper, though, at the stores, some one of the stores. [857] I am kind of a financial head of

(Deposition of William F. Davis.)

the proposition. Mr. Fuston is the vice-president, he is at one of stores every hour of the day, he is the purchasing agent and the warehouseman. We have one practical drug man at each store. Sumner Fuston is the purchasing agent and warehouseman. Fred Fuston is a practical druggist. Number One is operated as the Nashville Drug Company, at Twelfth and Jefferson St., Number Two is operated as the Nashville Drug Company Two at 1803 Cedar St., Number Three is operated as the Hemlock Pharmacy at 22d and Church Streets, Number Four is operated as the Fuston Pharmacy at 2801 West End Avenue, Number Five is operated as the Davis-Fuston Drug Company, at Mulberry and Fourth Avenue. From the corporation standpoint Number Three would be the main store, that is where the books and everything are kept. I know what our dispensers sell when Koke and Dope are called for. I think I know every detail of every store. I am positive of what they sell when they call for Coca-Cola. It would surprise me to know that our men put this Koke you refer to, put it in a container marked Coca-Cola and sell out of that when Coca-Cola is called for. If they did it when Koke, Coca-Cola or Ala-Kola was called for, but not if dope was called for. I have heard of Koke since I have been in the drug business, since 1909. I have heard of the Central Koke Company's Koke since I was connected with the business. I do not know when the Central Koke Company was organized. We have not sold much of the Chattanooga product. I do not know when we commenced buying

(Deposition of William F. Davis.)

it, and I do not know what amount we have bought, but we are not handling it now at all. We handle three or four drinks now exclusively, that is, Coca-Cola, Fletcher's Cola, Arrow-Cola and Gerst's Cola. If a man asks for Koke at our fountain we would give him one of these colas. I would be surprised to know that Mr. M. A. Doty, when Koke was asked for, drew that syrup to make the drink from a one-gallon jug that set on the soda fountain, and asked some young man in the store where the Koke jug was, and the other fellow told him where he found the jug and after he made the drink [858] with the syrup drawn from this jug, Mr. Doty poured the balance of the syrup into the container where he had just served a drink under the name of Coca-Cola.

Mr. A. B. LITTLETON.—We object to that because there is no evidence in this record of any such occurrence.

Exception overruled and appeal prayed and granted.

I would not believe it at all, it is impossible that calls for Koke, Dope, and Coca-Cola were drawn from the same container. The boys may serve out of the same container when they do not indicate that specific drink is expected. When a man distinguishes that he wants the Coca-Cola drink in any manner, that means the Atlanta Coca-Cola. He is told there is none there if there is none. If there is any, he will be served the Atlanta Coca-Cola. Afri-Kola is sent to the stores there from the warehouse, or direct from the manufacturer, in one gallon or five-gallon con-

tainers, we do not buy that by the barrel. It may be put in one of the syrup serving jars on the fountain, that indicates a cola drink of some kind. Coca-Cola is the common name. It is just possible that Afri-Cola or some other Cola drink is put in the Coca-Cola container if that is the only container that we can serve it from. I am not sure but that there is one container of that kind in each fountain. The Coca-Cola would be put in a different container, or kept in a dispensing bottle, or in a dispensing jar on the fountain, separate from there, the one that is made in the fountain. Pretty much the same conditions, with reference to serving except Number One. We have two or three different containers there, to keep the syrup separated, and serve the Coca-Cola in bottles there also. The Koke was kept just like we keep the other syrup. There is one, and probably two of our managers that won't serve Coca-Cola. We do not require them to if they don't want to. That is 22d and Church Streets, on account of some controversy that arose between him and the salesman of the Coca-Cola people, he won't use it and won't have any in the store. The name of the manager is Sumner Fuston. **[859]** I know Mr. Fuston makes it known to the public that he does not handle the Coca-Cola, so that he would not have stated that he was selling something else for Coca-Cola. He first started making the statement that he did not handle Coca-Cola before this conversation with Mr. Voylesong. He was not selling it at that time. He may have served Arrow-Cola or Fletcher's Cola in response to

(Deposition of William F. Davis.)

orders for Coca-Cola. The other store that does not serve Coca-Cola is the South Nashville store, it does not serve it all the time. I have had it there occasionally but it does not continuously sell there. When they ask for Coca-Cola they get what we have got, unless they do not want it. They would get what we had, whether it be Arrow-Cola, Fletcher's Cola, or Gerst's Cola. Gerst's Cola is handled there more than any other brand, but they do not hesitate to state that they have not got the Coca-Cola. There are more people call for dope than any other name. I think dope is a nickname used for the Coca-Cola drink more than any specific name, probably. I have heard Gerst's Cola called for, I have heard Fletcher's Cola called for. I do not recall just now where the designating names of the other fountain drinks have been used. It is not frequently we hear of Gerst's Cola, and Fletcher's Cola. I do not hear of any name of drink called for at the fountain I have mentioned, John D. Fletcher's carbonated syrup, with a genuine Coca and Cola flavor. We buy our Coca-Cola from Spurlock-Neal. We did not buy much Coca-Cola for the year 1914, for the year 1913, I have no idea. Afri-Kola is priced a dollar a gallon, and it costs a little less than that. Arrow-Kola the same. Fletcher's Cola one dollar twenty-five a gallon. We get it for a little less. Star-Cola I think is a dollar a gallon. Gerst's Cola a dollar a gallon. We pay for Coca-Cola when we get it from Spurlock-Neal there in small quantities, one dollar seventy-five a gallon. We have sometimes, and most frequently,

(Deposition of William F. Davis.)

take a part of some one else's order, who has a contract at one dollar fifty cents a gallon, and we help him use it. One dollar and a half that is the smallest we ever paid. We have handled other [860] cola drinks ever since we have been interested in the business. Have always had some one besides Coca-Cola and sometimes more, occasionally we have used Coca-Cola exclusively. The last time we used Coca-Cola exclusively was in 1914. It was used most of the time exclusively in Number One, 1914, also Number Two almost exclusively. At this place we substituted Coca-Cola for Koke and Dope. We do not recognize Koke and Dope as meaning Coca-Cola at all. Dope refers to the whole class. In 1914 at these two places exclusively we substituted Coca-Cola when Dope and Koke was called for. As much so as it would be a substitution to serve any other Cola drink when Dope was called for. When Dope is called for I believe we can give any cola drink. I do not recall that the name Koke has ever been used in calling for drinks, but it probably is and we served what we have. We serve a cola drink unless there is a manifest intention on the part of the customer that he wants the Atlanta-made goods, but if he calls for the genuine Coca-Cola we serve the Atlanta goods, or we will tell him we have not got it. If he says Coca-Cola in a passive way, we might give him anything else.

Redirect Examination.

The Coca-Cola salesman made some kind of threat that exasperated our vice-president, and he had been handling Coca-Cola before that alternately and occa-

(Deposition of William F. Davis.)

sionally. At that particular time he happened to be out of it and the salesman insulted him in some sort of way, and he, I believe, ordered him out of the house, and since then he has refused to buy it at all. I was not present there.

Mr. HIRSCH.—I now move to rule out the entire conversation, because he was not present, and it must be hearsay evidence. Everything concerning that conversation related by the witness, I object to, as it is hearsay evidence.

Exception overruled and appeal prayed and granted.

Probably I met the same man, I do not recall. He came to me once over at Number One, of course I did not get mad at him. Over at Number One he threatened to take some stuff, a clock that had a Coca-Cola [861] name on it, and I think a jar of that, probably a dispensing jar, something of that sort, that had Coca-Cola on it, out of the house, if we served any other kind of drink than Coca-Cola. I laughed at him about it a little, and I told him that was our business. We would serve what we pleased, and he would not take either of those things out of the house there. At Number One we have served Coca-Cola out of a dispensing bottle that is labeled Coca-Cola, a jar that this man referred to was a pump jar, holding a gallon, or such matter. It is the old-style fountain. We handle other soft drinks there besides cola drinks. We always keep each drink in a container that bears the proper label if we have it, if we have not it, then we keep it where we

can see it and know what it is. I do not recall any instance at any of our stores where this product Koke was served to a customer when he asked specifically for Coca-Cola.

Deposition of Sumner Fuston, for Defendants.

SUMNER FUSTON.

Direct Examination.

Forty-four years old; reside Sliverdale Park out in West Nashville. Engaged in the drug business. We have five stores all located in Nashville. We have soda-fountains in all of our stores. We make our headquarters at the Hemlock Store, at 22d and Church Streets. I am about the soda-fountain frequently so I can hear the names our customers use in asking for the drinks they want. We serve all kinds of phosphates, soda-waters, root-beer, etc. I sell Fletcher's Cola, and bottled Coca-Cola. I sell Fletcher's Cola at my fountain. We sell the Atlanta Coca-Cola only in the bottles. We have customers come into our store and ask for koke or dope. We serve, when they ask for Koke or Dope, Fletcher's Cola. When customers ask for either one of these they want what I have been serving them. I have dispensed Atlanta Coca-Cola. My trade was satisfied with Coca-Cola. I have always served that; I handled Atlanta Coca-Cola because I was out of Fletcher's Cola, and Fletcher could not get it to me as quickly as I liked, so I ordered a gallon out from Spurlock-Neal with my regular morning order. *Weel,* the trade was just not satisfied with it. They

(Deposition of Sumner Fuston.)

kicked on it. I knew they were not used to it, because I had always served [862] the other, so I did not serve it any more. The other syrup always appeared to be a richer syrup, a heavier bodied syrup and seemed to suit them. That was why I quit handling Atlanta Coca-Cola. I have a sign up at the fountain saying I handle Fletcher's Cola. I have had it up there for a long time. I know this, the trade is satisfied with it. I have been serving them for years and they do not know anything else except what I have been serving them. I have a line of trade that I have been doing business with for years, ever since I have been there. It will be three years in September, it was two years last September at this particular stand. I have had the Atlanta Coca-Cola complained of as not what was asked for when it was served to a man in response to a request for Koke or Dope. I do not know the fellow's name, only they called him Crusty, a fellow that drives one of Hill's Bread Wagons. He came in one day and we had some of the Coca-Cola on the fountain, had it setting back in a jug. There was a prescriptionist that insisted that he should have Atlanta Coca-Cola. He was from Atlanta or Jacksonville, and he wanted it himself, so I said to him, "Mr. Horn, my trade won't be satisfied with it, in the first place, and I do not care to put it in on that account, the other is perfectly satisfactory." He said, "I will tell you, I will bet that if you will put it in you will increase your trade. You will double it and they will walk for blocks to get it." I said, "You do not know our customers

(Deposition of Sumner Fuston.)

like I do, here. I have been catering to them right here for a good many years. I have been in business within a few blocks since 1908. So, to satisfy him, and give him his drink, I ordered and put it up. It happened that this fellow who drove the bread wagon was the first regular cola drinker that came into the house, and instead of taking it out of the jar I always served him from, I took it out of the Coca-Cola jug and served it to him. Of course Mr. Horn was standing there. Mr. Horn was my prescriptionist, he wanted to prove that I would double my trade with Atlanta Coca-Cola. This fellow took a sip of it and set it down and said, "Doc, you have mixed drinks on [863] me." "Why," Horn said, "that is the genuine Coca-Cola there, that is the sign that is on the bottle." Well, the fellow did not want it or want to be unpleasant, and he said, "Doc, I would rather you let me have that drink you have been letting me *hand*, if you have got it." Well, that little instance, of course, was one of several. I have been catering to that trade in that part of town for years, and know whatever satisfies my trade is what I want to sell. When customers come in and ask for Koke or Dope, I would not give entire satisfaction if I did not serve Fletcher's Cola, and I reckon I would lose their business. I do not see how I could be considered to be substituting, as long as I give them, they do not complain, but if I gave them the other they would. We keep those syrups at this store where we make our headquarters, they are in those big jars. We have to have them labeled so we can see the labels. The

(Deposition of Sumner Fuston.)

trade cannot see the labels. The label is facing us, a little thing here with a label on it facing the dispenser. We do not always keep a certain syrup in the container labeled with the name of that specific syrup. We cannot always do that, for instance, I have a jar labeled ginger. I have a simple syrup in it, because we never sell ginger. Hires' Root Beer is another jar of the same kind. Myself and the different clerks we all know from the location where the syrup is. We have none labeled Fletcher's Cola, I do not suppose the manufacturer knew anything about Fletcher's Coca-Cola. They labeled them, we did not pay any attention to them, and the tops came to us already labeled in the fountain. We got the syrup from the manufacturers in barrels, some ten-gallon kegs. The color of the barrels is red. If a customer should come into our soda-fountain and ask for a Koke or a Dope, I would not understand that he is making a definite and specific request on me for Atlanta Coca-Cola. I have customers drinking Coca-Cola that never tasted Atlanta Coca-Cola in their lives. You know a new cola drink is developed about every day, for the last few years, hundreds of coca-cola drinkers have never tasted Coca-Cola. You know when these people called me up I was [864] very much employed trying to gt the goods out to the other four stores, and I made a remark I wished I was not a witness and did not have to come up here. This young man asked me what I was coming for. I told him something in regard to the Coca-Cola Company and other companies. One word brought on

(Deposition of Sumner Fuston.)

another, and he said, "I don't reckon I would know any difference."

Mr. HIRSCH.—I object to what other people said.

I do not think he would know the difference, and I said, "No, Mack, you have never drank any genuine Coca-Cola since you have been here, since you have developed your Coca-Cola habit right here, and I know you have never drank any in my store." That is one of hundreds of cases of my observation. I remember a call on me from a representative of the Coca-Cola Company. That was last summer some time. A customer came in; I was forward with him, and this gentleman (indicating Mr. Herr) came in, I did not know the gentleman that was with him, but I do know him. He came in and did not say, "Is this Mr. Fuston?" he came in with a card in his hand and threw it down and said, "How is your stock of Coca-Cola?" and indicated that he was representing the Coca-Cola Company. I paid very little attention to the card; anyway, I understood he was district manager. Of course I could not repeat word for word what passed between us. I know we had a heated discussion; he asked me how my stock of Coca-Cola was. I told him I did not have any except in bottles; I did not serve it at the fountain. Then he wanted to know if it was right, or trying to do the square thing, when people came in to serve them with that stuff I had when they came in and called for Coca-Cola. I told him it was right to serve my customers what was satisfactory, as well as I knew what was satisfactory and one word

(Deposition of Sumner Fuston.)

brought on another and we had a little discussion. I told him I was not selling Coca-Cola from Atlanta, did not intend to, I was not going to throw something away that was doing my trade better and giving them better satisfaction. I thought it was business for me to handle the Coca-Cola that I could make the most on and give my trade [**865**] satisfaction. He and I agreed that if I would sign up—have a sign put up there that I was selling Fletcher's Cola he and I would be friends. I think he took the position afterwards that if I put that up I would ruin my trade, anyway we agreed on that. I have got the sign up now, it may be that sometimes the boy will clean the mirror and leave it down, but when I come in I put it up again. I stil buy Fletcher's Cola by the barrel, that shows I am not losing business. It is my impression that he called it Fletcher's Coca-Cola. All I care about is to satisfy my trade and make as much money on the drink as I can. The first thing I consider is satisfying my trade, if I can buy stuff where I can make better margins, that is my business as a buyer.

Cross-examination.

Fletcher's Coca-Cola is made by the Nashville Syrup Company. Our signs were Fletcher's Coca-Cola. We put up the sign "We handle Fletcher's Coca-Cola." Outside of Fletcher's Coca-Cola I know of no other drink on the market, except Coca-Cola, made in Atlanta. When a man says Coca-Cola he does not necessarily refer to the Atlanta Coca-Cola. I know we have them to come in and ask for

(Deposition of Sumner Fuston.)

the date. I do not remember the year. I think the concern that manufactured Fletcher's Coca-Cola changed to Fletcher's Cola. I think why they changed it was because they had some trouble with you. We are still selling Fletcher's Coca-Cola. I do not know whether I ever sold Atlanta Coca-Cola before that. I might have had some Coca-Cola syrup before that. I do not sell Coca-Cola except in bottles, and not particularly pushing that. My customers get Fletcher's Cola every time they call for a cola drink. If they call for Coca-Cola I give them that. They have instructions to do that at all the stores owned by and controlled by this company from myself. I am the head of it. Mr. Davis is president. During the years 1913 and 1914, as far as I can recollect, I do not remember buying any Coca-Cola myself. The managers in a great many cases, buy Coca-Cola themselves. If my manager says a thing suits his trade, he is at liberty to put it in. I intend to sell Fletcher's cola to my trade as long as they want it and are satisfied. When Coca-Cola is called for I have got it there for them. If you say Atlanta Coca-Cola, I will tell you I have not got it except in bottles, and I will give it to you in bottles if I have it. If you come in and say you want Coca-Cola without saying Atlanta Coca-Cola, I will give you just anything I have in the cola line.

Deposition of Paul E. Webb, for Defendants.

PAUL E. WEBB.

Direct Examination.

I am eighteen years old; have been soda dispenser at the United Cigar Store Company, Fourth and Union, Nashville, Tennessee, about eleven months, altogether about three and a half years, not in Nashville all the time, one time in Jackson, Tennessee, for four months. I have dispensed Fletcher's cola, Diehl's Star-Cola, and some other names. I do not remember the names of them. I am dispensing now Coca-Cola only. I have dispensed other cola drinks in addition to Coca-Cola at various other places I have worked. I have had customers come in and ask for drinks by other nicknames, some of the names they asked for, Koke, Dope, Poison, Shot. When they came in and asked for drinks by [868] those names, they wanted any kind of drink they could get, any kind of cola drink, it did not make any difference. I did not consider when they came in and asked for a koke, a dope, a shot, poison, any of those names, that they were making specific requests for Coca-Cola and nothing else. I regard those names as nicknames common to the trade, referring to cola drinks as a class. At the United Cigar Store I do not always keep Coca-Cola in the cola container with the label Coca-Cola on it, because sometimes the pumps will wear out; we have had pumps that have gotten out of fix and that did not work and we would have to change it. Other cola syrups come in red bar-

(Deposition of Paul E. Webb.)

rels. At the baseball park here at Nashville they serve Diehl's Star-Cola in bottles. They ask for Koke and they give them that, it has a red label on the bottle. The bottle has a big label on the side of it. They ask for that by Dope and Koke. I never heard anyone who asked for it by Dope or Koke reject it on the ground that it was not what they asked for. They mostly call for it by Dope and Koke, for it is advertised in the park. They have a large advertisement that says "Call for Diehl's Star-Cola." The boys carrying the containers they have for bottles, they have labels on them all over the sides, "Diehl's Star-Cola only." The people who ask for Dope know they are getting Star-Cola.

Cross-examination.

We use any kind of pump we have without the label Coca-Cola on it sometimes, we have one labeled Chocolate and one labeled Coca-Cola. The one we have labeled Coca-Cola we carry Coca-Cola in it. We have two containers but have no use for Coca-Cola in both. One labeled Chocolate and one labeled Coca-Cola, and have Coca-Cola in both. It is necessary to have Coca-Cola in the fountain to supply the trade. Before I went to the United Cigar Stores I worked at several different places, Smith Brothers, Jackson, Tennessee, I worked there four months. Paul & John Stumb's, I worked there eight months. Zeh's, down on Broadway in Nashville, I worked there two months and a half, and at [869] Skalowski's, about three months. I went with the United Cigar Stores on March 10th of last year, 1914.

(Deposition of Paul E. Webb.)

If a person came into the United Cigar store and asked for a Koke or a dope I would give them Coca-Cola. Skalowski used Coca-Cola, too, that is what they claimed. Zeh's had Coca-Cola and Diehl's Star-Cola. When a man asked for Coca-Cola, I served him Coca-Cola, and if a man asked for Dope, I served him Diehl's Star-Cola. I would not serve him Coca-Cola in response to orders for Dope or Koke. I had heard of Diehl's Star-Cola before that time. I served at Paul & John Stumb's Coca-Cola, at Smith Brothers, Jackson, Coca-Cola. At Smith Brothers in Jackson, when they had only Coca-Cola, I served Coca-Cola when asked for Koke or Dope. I did not think they wanted Coca-Cola. I knew there was such a thing as Koke, and giving other drinks when they did not ask for Coca-Cola, but I did not have any to use, I gave them what we had. Probably at that time I thought he wanted Coca-Cola when he asked for Koke but later on I knew the difference. I commenced selling Star-Cola when dope and koke were called for, at Zeh's. I was at Henry Sykes in the Stahlman Building and they used two kinds there. They handled Coca-Cola and dope, they said Dope was anything except Coca-Cola. They made more money on it, that is the reason that they sold the other for dope and koke. When I first started out in the business I understood the names "Koke" and "Dope" to be nicknames for Coca-Cola.

Redirect Examination.

I understood that they were nicknames of Coca-Cola exclusively, Koke and dope at first. I had

(Deposition of Paul E. Webb.)

worked at three bottling works, there was two different bottling works, that made other cola drinks and we had the Coca-Cola Company there that bottled Coca-Cola only, and we—in fact, I know of them, and if a person asked for anything except Coca-Cola he got it, at some places, but where I was permanently, we used Coca-Cola only. These other drinks they are sold in bottles that they ask for as Koke or Dope.

Recross-examination.

They had great long names and a person would not go to the trouble of [870] calling for them, they would just call for a koke or a dope and get them.

Redirect Examination.

They were put up in bottles, those other drinks. Anyone could tell it was not Coca-Cola by the crown on the bottle, the bottle was generally labeled.

Recross-examination.

I saw Diehl's Cola with labels on it at the ball park. I won't say positively, I remember at the time I saw those labels they struck my attention.

Redirect Examination.

At these places where I was and they served only Coca-Cola, when people came in and asked for a koke or a dope I gave them Coca-Cola, because it was all I had.

Deposition of Brants Darden, for Defendants.

BRANTS DARDEN.

Direct Examination.

Twenty-three years old; live 219 Sherman Street, Nashville, Tenn.; lived here about fourteen years; business, engaged in, soda dispenser at Henry Skagg's, located Stahlman Building. I have been soda dispenser for Henry Skagg about four months the last time there; I worked for him once before. I have been a soda dispenser about six years. Have dispensed a great many different kind of drinks, I could not tell all of them. The cola drinks I have dispensed are Fletcher's Cola, Dope, Coca-Cola, and others, I cannot remember. I have known of these other cola drinks, other than Coca-Cola, most ever since I have been in the business. I have had calls for drinks under the names of dope and koke at the soda-fountains where I have worked. I have had customers come up and say, "Give me a Koke" or "Give me a Dope." I have had other names used. A lot of them will say, "Give me a shot in the arm" and different things about like that. I do not regard the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. When a customer comes into my soda-fountain and asks for a Koke or a Dope I do not understand he [871] has made a definite and specific request on me for Coca-Cola and nothing else. The word dope means to me some cola drink, a drink of that order. In the places where I have worked and handled Fletcher's Cola and other similar drinks, when a customer came into

(Deposition of Brants Darden.)

my establishment and asked me for a dope I served him Fletcher's Cola at times when he asked for dope. At the different soda-fountains where I had other cola drinks than Coca-Cola and customers came in and asked for Dope I generally gave him what I made the most money on, when they call for a dope or a koke. I go out to the baseball park occasionally. Star-Cola is sold out there. Out there I have heard them call for Dope, things like that, and that is what they gave me. I have heard them ask for it, "Give me a Dope"—"Three dopes"—as many as they wanted, or "Give me a Cola or a Koke." Of cola drinks I have known of Ala-Cola, Star-Cola, Fletcher's Cola. They are almost the same color, look to me like about the same color, a slight difference in taste, pretty much the same general taste. They are almost the same color, they seem to me, there may be some difference in them. Just to a casual glance they look about alike. I have noticed the barrels and kegs in which the syrups of these different cola drinks are sent to the soda-fountain in, some were red—a reddish color.

Cross-examination.

At the ball park I never called for Coca-Cola. I have heard others call for Coca-Cola down there. They got the same thing as I did at that time—Star-Cola. Before I worked for Skaggs the last time I worked for the Elledge Drug Company of Pulaski, Tennessee, I worked there about eighteen months, before that I worked at Birmingham for the Norton Drug Company a short while, before that East Lake,

(Deposition of Brants Darden.)

then Norton's, then Pulaski, then Skaggs. Before I worked at Norton's I worked for John and Paul Stumbs about a year, before that I worked for Lopez at New Orleans, before that Harry Gears, Galveston, Texas, before that for Billings, Nashville, Tennessee, and before that Albert Wibber about two years, that is where I started. The drinks they were serving at Albert Wibber's were straight Coca-Cola, dope and many other [872] drinks, and koke. I do not know where Koke was made, I am not sure, but I think it was made at Nashville, by Mayfield, and they have branches, two or three branches, one of which is at New Orleans. I do not even know the name of the firm, I think it was Mayfield. I do not think it has been quite six years. I know I handled Koke there at Billings. I did not have anything to do with the syrup. Harry Grer handled some cola drink, I do not know whether he handled Coca-Cola or what cola it was. At Lopez's in New Orleans, I did not have anything to do with his syrup. I think I heard the terms dope and koke used there; whatever they had I served. At Paul and John Stumb's they handle Coca-Cola only. At East Lake I do not know what kind of dope that was, some kind of cola drink; it might have been Coca-Cola. At the Norton Drug Company I do not know. At the Elledge Drug Company they had Coca-Cola, also Fletcher's Cola. When a man called for Koke or Dope I gave Fletcher's, it did not make much difference; I always took it they wanted something on that order. The first time I heard the expression

(Deposition of Brants Darden.)

dope used was when I worked for Wibber's in the Arcade. I gave Coca-Cola when dope was called for. I understood they wanted a cola drink when dope was called for and I gave them a cola drink when dope was called for. I had the drink Koke at Wibber's and when I did not handle Koke I gave them Coca-Cola, or a cola drink. I do not remember whether I handled Koke the first or the last time I was there. As a rule I gave the one I could make the most money on. I did not practice that at the Elledge Drug Company. When they called for Koke I gave Koke, they paid five cents for Koke. The general policy has been when Dope or Koke was called for to give the one I made the most money out of. If I did not have those two drinks, any of that kind I happened to be handling, when they called for a drink like that, if I happened to be closer to that, I gave the cheapest drink, the one I could make the most money out of, but if I happened to be closer to Coca-Cola I gave that. When they call for dope or koke, as I told you, I would give them the first cola drink I came to, according to [873] what I was handling at that time. When they called for dope or koke I would give them some cola drink that we handled, and was nearest to me and sometimes Coca-Cola. I would rather give the one we make the most money on. At Skaggs' place we carry Coca-Cola now, that is all, we do not carry Fletcher's Cola. When they call for dope or koke we give them Coca-Cola. That is what I understand they want, but they are not calling for it, though. When a man comes in and

(Deposition of Brants Darden.)

asks for a dope or a koke or Coca-Cola, I make up that drink from the syrup drawn from the same container, whichever of the three names he says. When they ask for dope or koke I give Coca-Cola. I have only been with Skaggs since October. I was with him before that. At these other places, when a man came in and asked for Coca-Cola I gave him what appeared to me to be a cola drink. I never served when Coca-Cola was called for anything except Coca-Cola. What the people wanted when they asked for koke or dope I always thought they meant something on the cola drink line, some kind. Fletcher's Cola is cheaper than Coca-Cola. That is one reason why I served Fletcher's Cola for dope and koke, and because it is a cola drink.

Deposition of John D. Fletcher, for Defendants (Recalled).

JOHN D. FLETCHER.

Direct Examination.

Q. 1. Mr. Fletcher, you were asked on your cross-examination this afternoon about certain parts of the records in the case of the Nashville Syrup Company vs. Coca-Cola Company. The Coca-Cola Company of Atlanta vs. Nashville Syrup Company of Nashville, Tennessee, in the United States District Court, at Nashville. I present you a transcript of that evidence, and ask you to turn to the affidavit of Judge John S. Candler, and read what that says. I think it is at page 123.

COUNSEL FOR COMPLAINANT.—Enter ob-

(Deposition of John D. Fletcher.)

jection thereto, as being incompetent evidence.

Objection overruled and appeal prayed and granted.

The affidavits above referred to are as follows: The affidavit of Asa G. Candler, is as follows, appearing on pages 124, 125, and 126. State of Georgia, County of Fulton: Before me, an officer duly [874] authorized to administer oaths, personally appeared Asa G. Candler, who being first duly sworn, in the above-stated case, on oath deposes and says that he is fifty-nine years of age and resides in the City of Atlanta, Georgia, and that he is President of the Coca-Cola Company, the complainant in the above stated case, and has been continuously since the organization thereof, in 1892, and that since the organization of the Coca-Cola Company deponent has been actively and intimately connected with the manufacture and sale of Coca-Cola, and thoroughly familiar with all of its formulas and processes of manufacture, and with all of the details of said business. Deponent states that he, individually, owned the formula, trademark and trade name of the Coca-Cola before he transferred and assigned the same to the Coca-Cola Company, and was familiar with the original formula. That said process was never patented or copyrighted. Deponent states that under the formula obtained from him by J. S. Pemberton, his transferees and assigns, coca leaves were used in its manufacture, but it was never intended in their use, preparation and treatment in the formula to get therefrom any cocaine, and that from his

(Deposition of John D. Fletcher.)

intimate contact and relationship therewith, Coca-Cola has never contained any appreciable amount of cocaine. Deponent states that in a suit brought by said Company against the United States Government in the year 1899, to recover money paid under International Revenue Tax, it was stated by a chemist for the government, and also by another chemist examined as a witness on the trial of that case, that they had found approximately one four-hundredth of one per cent of cocaine in samples of Coca-Cola syrup analyzed. That neither this deponent, the Coca-Cola Company, nor its officers had known or believed prior thereto, that cocaine was present in the product, even in this inappreciable amount, said cocaine not being a part called for by the formula, for Coca-Cola, at the time of its inception, at any time since, and that the testimony of these chemists was the first intimation that they had had that there was ever the slightest trace of cocaine in [875] said product, and that said slight tract of cocaine, if it was present in the product prior to said suit, it was due to imperfections in the method of manufacture and not to the formula and was unknown to deponent, and that as soon as said information was received by the Coca-Cola Company, it immediately adopted another method of treating the Coca leaves, which this deponent is informed and believes entirely eliminates all traces of cocaine. Deponent further says that the process and formula for Coca-Cola is a secret one, but same has never been patented or copyrighted, and any reference in any of

(Deposition of John D. Fletcher.)

the transfers or other papers to a patent or copyright are inaccuracies and errors in the use of such words. Deponent further states that the Coca-Cola Company has never had any litigation of any nature whatsoever in the Supreme Court of the United States, not being a party to any case or proceeding in said court. Deponent states that he makes this affidavit for use in the above-stated case. And further this deponent saith not. Signed: Asa G. Candler.

And the affidavit of John S. Candler, is as follows:

State of Georgia, County of Fulton; Before me, an officer duly authorized to administer oaths, personally appeared John S. Candler, who, being first duly sworn on oath deposes and says that he had had his place of business in the City of Atlanta for thirty years, and that he has resided within close proximity to the City of Atlanta for thirty-five years, and that he is fifty years of age. Deponent states that he is a member of the law firm of Candler, Thompson and Hirsch and that he is General Counsel for the Coca-Cola Company, a corporation organized and existing under the laws of the State of Georgia. Deponent states that as its general counsel, and as an officer of said corporation, he has been in intimate touch and has had close acquaintance with the Coca-Cola Company since the organization of said company. Deponent states that he is perfectly familiar with the drink manufactured by the Coca-Cola Company, and has known of the details of the manufacture of Coca-Cola since the Coca-Cola **[876]** Company

(Deposition of John D. Fletcher.)

commenced the manufacture thereof. Deponent states that as counsel for Asa G. Candler, he has prepared the petition for Charter for the Coca-Cola Company, and as its attorney aided in the organization thereof. Deponent states that even before the organization of the Coca-Cola Company he was familiar with the product known as Coca-Cola, and that deponent, as attorney for Asa G. Candler, aided and advised concerning the purchase of the formula, trademark and trade name from J. S. Pemberton, his transferees and assigns. That he is perfectly familiar with the formula so purchased by Asa G. Candler, and that he came in contact with the manufacture under said formula. Deponent states that at one time he had his office at the office of the Coca-Cola Company, and that at all times since, Asa G. Candler, the now President of the Coca-Cola Company, purchased said formula, that he has been acquainted with said formula, and the manufacture of said drink. Deponent further says that under the formula so obtained by said Asa G. Candler, from J. S. Pemberton, his transferees, and assigns, coca leaves were used in its manufacture, but it was never intended in their use, preparation and treatment in the formula to get therefrom any cocaine, and from his intimate contact and relationship therewith Coca-Cola has never contained any appreciable amount of cocaine. Deponent states that he was of counsel for the Coca-Cola Company in a suit brought by said Company against the United States Government in the year 1899 to recover money paid

(Deposition of John D. Fletcher.)

under Internal Revenue Stamp Tax, and that in that suit, it was stated by a chemist for the government, and also by a chemist examined as a witness on the trial of the case, that they had found approximately one four-hundredths of one per cent of cocaine in the sample of Coca-Cola syrup, analysed. That neither this deponent, the Coca-Cola Company, nor its officers had known or believed prior thereto that cocaine was present in the product, even in this inappreciable amount, said cocaine not being a part of that called for by the formula of Coca-Cola, at the time of its inspection, nor at any time since, and that testimony of these chemists was **[877]** the first intimation of even the slightest trace ever found in said product, and if said slight trace of cocaine was present in the product prior to said suit, that it was due to imperfections of the method of manufacture, and not to the formula, and was unknown to deponent, and that as soon as said information was received by the Coca-Cola Company it immediately adopted another method of treating the Coca leaves, which this deponent is informed and believes entirely eliminates all traces of cocaine. Deponent further says that the process and formula for Coca-Cola is a secret one, but same has never been patented or copyrighted, and any reference in any of the transfers or other papers to a patent or copyright are inaccuracies and errors in the use of such words. Deponent further states that he has been legal adviser of the Coca-Cola Company since the organization of said company, and deponent states

(Deposition of John D. Fletcher.)

that the Coca-Cola Company has never had a suit or litigation of any kind whatsoever in the Supreme Court of the United States, nor has any case ever been heard or decided in that court to which said company was a party. Deponent states that this affidavit is made for use in the above stated case. And further this deponent saith not. Signed, John S. Candler.

These affidavits were made in the case of the Coca-Cola Company vs. Nashville Syrup Company and what I have just read from is a copy of the transcript in the Circuit Court of Appeals.

Mr. HIRSCH.—We admit that.

Mr. HIRSCH.—And I further object to that, that it is improper redirect examination.

Objection overruled and appeal prayed and granted.

Deposition of John R. Pardue, for Defendants.

JOHN R. PARDUE.

Direct Examination.

Twenty-four years of age; reside at Nashville; business, Freed and Haas's place in Nashville, Tennessee. I have been there six years, my occupation is assistant manager. I look after the syrup department and the cream department, head dispenser of the fountain. They have a soda-fountain among other things. At the soda-fountain we serve all kinds of cold drinks in the way of sodas, soft drinks, and phosphates. **[878]** Some of the cola drinks we have are Koke, Dope and Coca-Cola,

(Deposition of John R. Pardue.)

others I have dispensed since I have been dispensing soda water are Star-Cola, Fletcher's Cola, I believe those are about the only ones. I have been dispensing soda water about ten years I think. Before I was with Freed & Haas I was with Page & Simmons Drug Company of Nashville, Tennessee, before that Youngerman & Rust of Nashville. Before I went to jerking soda water I remember of Celery-Cola. Some customers called for Coca-Cola, some for Dope and some for Koke. We have had a few calls for a shot in the arm. When a customer asks for a dope or a koke I give him what he calls for. If he calls for Koke I give him a Koke. If he calls for a Coca-Cola I give him Coca-Cola. Mayfield makes Koke. I have been dispensing this Koke for going on six years. I have dispensed that ever since I have been with Freed & Haas. When a customer comes into our establishment and asks for a Koke or a Dope I do not know what he wants any more than I give him what he calls for; in other words, I give him the drink that costs the less money in response to Koke or Dope. I give him Mayfield's Koke or Dope, that costs less than Coca-Cola. When they ask for Koke or Dope they want something of that class, a cola drink. When a customer comes in and asks for a Koke or Dope, I do not understand he is making a specific or definite request on me for Coca-Cola exclusively. I frequently go into soda fountains myself and ask for cola drinks, I ask for them as koke or dope, it makes no difference to me so as I get a cola drink.

(Deposition of John R. Pardue.)

Mr. HIRSCH.—Pardon me, we do not object to leading questions, but I think you have gone the limit.

Mr. LITTLETON.—Well, you can note the exception.

Mr. HIRSCH.—Note an objection to the question and all that he has asked, because they have been leading.

Objection overruled and appeal prayed and granted.

I also dispense Coca-Cola at my soda-fountain. I believe day before yesterday, or two or three days ago, one of our customers come to the fountain and called for a Coca-Cola and the boy gave him Coca-Cola; **[879]** and he got sore about it, come over to the cigar case and said the boy gave him some dope or something. He did not know what it was. I told him it maybe it was Dope he had been drinking before. He said, "I do not know whether it is or not, I do not pay much attention to what I call for." I went up there and gave him a Dope and said, "Is that is?" He said, "This is what I want," and he told the boy, "When I come up again this is the drink I want, it don't make a dam what I call for." I gave him Mayfield's stuff, and I ran out of Mayfield's Dope here, it has been about a year and a half ago, I believe, we were out for four days and used straight Coca-Cola on the fountain and we got kick after kick on it about serving old Dope. They kicked and said something was the matter with it.

(Deposition of John R. Pardue.)

Cross-examination.

When customers ask for koke I could not say and know that they want K-O-K-E but a fellow would be a damned fool not to give Koke that costs less than Coca-Cola. If you were working for me and give Coca-Cola syrup that costs me more money to a fellow who did not call for it, I would not fire you but I would pick you up and throw you over the counter. If he calls for coke or dope I am giving him the cheapest syrup I have on the fountain. We do not buy two kinds of syrup from Mayfield. I think it is labeled Koke and Dope, the same syrup. We have a container at our fountain for this Koke and Dope, and Coca-Cola syrup is in a different container. Everytime anybody comes up and asks for Koke, we give it to him out of the Koke or Dope container, and if he asks for Coca-Cola we give him the cola out of the other container. We have always done that, all the time I have been there, six years. I fooled one of the Coca-Cola men and offered to bet him about it, but he would not bet. He took Mayfield's Koke and thought it was Coca-Cola. I did not fool him, he picked out Mayfield's Koke for Coca-Cola, and called it Coca-Cola. Yet there is enough difference in the syrup to have people to kick about Coca-Cola. We put Mayfield's syrup in one container and Coca-Cola in another container. I have never served Coca-Cola [880] out of the Koke or Dope container when asked for Coca-Cola. I gave orders for that to the three boys at the fountain. I says, "If they want Koke or Dope,

(Deposition of John R. Pardue.)

give them Mayfield's stuff; of they want Coca-Cola, give them Coca-Cola." Their instructions were to give them what they called for. I am at the fountain about eight hours a day, six some days. I do not know whether I was at the fountain on September 11, 1914, I might not have been there at the time. I might have been downstairs at the time you tried to get me, I make syrups and look after the cream downstairs in the basement, first up and down. September 11, 1914, I was there. On September 11, 12, 14, 1914, October 19, 20, 21, 1914, Freed & Haas were using separate containers for that one syrup Koke and Dope and a different one for Coca-Cola. When a man came in and asked for Coca-Cola I did not serve him out of the container that had the Dope and Koke in it, and I am quite certain that when a man asked for Dope and Koke I did not serve him out of the container that had Coca-Cola in it. I do not know what goes on in that place when I am not there. There is one container used for Koke or Dope and a separate container used for Coca-Cola, and that has been going on for six years. We buy our Coca-Cola from Spurlock, Neal & Company. I do not know how much we bought in 1914 or 1913, I am not the buyer. Calls for Koke and Dope are in the majority, that applies to anyone that calls for it. When Koke, Dope, Shot in the Arm, and those terms are called for I serve the cheapest drink I have got. It applies to a cola drink. I do not know that they want Coca-Cola. I have never served Coca-Cola in response to calls for Koke, Dope, or Shot in

(Deposition of John R. Pardue.)

the Arm. I do not know whether the nicknames apply to Coca-Cola. They want a drink on that order, a cola drink. I don't know whether some of them mean Coca-Cola. I take it they want a cola drink, because those drinks are cheaper, that is the reason. I do not know whether they want a Coca-Cola or not. I feel justified in giving them what they want if they do not call for Coca-Cola. I do not know how much Coca-Cola my firm bought from Spurlock, Neal & Company in 1914. We did not receive many calls for Coca-Cola in 1914. Calls for Coca-Cola [881] have been about the same all the time I have been there. I am not the buyer. The calls for Coca-Cola have been about the same for the last six years. The sale of Coca-Cola has not declined any. We use an ounce of syrup to make a glass of Coca-Cola. I serve something like twelve customers in a day, about an average day. I do not believe I will serve that many the year around, in winter time we won't average a gallon of Koke and Dope together. An average of 36,000 people pass there. We sell I guess between two and three gallons per day of Koke and Dope in the summer, and of Coca-Cola, I don't really know, I do not believe that much at our fountain. I could not say how much. Some days it will be three or four times, sometimes it will be three or four days before I have to fill the jar up. I think it holds three quarts. We sell two or three gallons of Koke and Dope a day, and sell three quarts of Coca-Cola in three or four days. Koke and Dope is just a nickname applied to cola

(Deposition of John R. Pardue.)

drinks. I suppose it arose something on the cocaine idea, about cocaine being in the drinks, in Fletcher's Cola, Coca-Cola, and several other drinks. I cannot say where, except that I have heard it was in all cola drinks, customers have said so at the fountain. I have heard it was in all cola drinks. I have argued that with customers at the soda-fountain, that there was cocaine in cola drinks, Koke and Dope or Coca-Cola. I first heard the expressions Koke and Dope some ten or twelve years ago, I think. That was before I heard of this Koke and Dope. Other drinks I knew about ten or twelve years ago was Celery-Cola. Fletcher's Cola has not been on the market that long. I heard of Celery-Cola when in Nashville. It seems to me Star-Cola was on the market then. That is all I can remember. I first heard of Coca-Cola more than eight or twelve years ago. Have heard Koke and Dope in connection with Coca-Cola at that time. I heard of Celery-Cola and Star-Cola first before Coca-Cola. I do not know what dates it was, it has been somewhere about twelve or thirteen years ago. I had not heard of Coca-Cola prior to twelve or thirteen years ago. I had never seen any advertisement of it, hadn't heard of it at all as I can remember. **[882]** The reason the nicknames arose was on account of the discussion as to cocaine, that is my idea, I do not know. I have heard of cocaine in regard to Coca-Cola and Fletcher's Cola, and all of them. I have heard it in the last three or four years. I never heard it about Fletcher's Cola before then. I heard it about Coca-

(Deposition of John R. Pardue.)

Cola. I heard of Coca-Cola about ten years ago, I think, also Celery Cola. I do not know anything about Diehl's. I knew of Star-Cola at that time. They just said all Coca-Cola and dopes all had dope in it, and I heard that about ten years ago, and we have discussed that ever since. Don't know of any persons calling for Koke or Dope at Fried & Haas' that knew we handled it but they might know. We have had dope on the fountain for the length of time I have been there and I guess they had it before. We get it from St. Louis, Mo., I think. I do not know how long we have been getting it from St. Louis nor where we got it from before we got it from St. Louis. I think we have been getting the syrup Dope and Koke for the past six years. We have notified the public that we handled Koke and Dope by telling them over the fountain. Some take Koke and Dope for a fountain nickname and some do not care what you give so as it is a cola drink. Sometimes we have orders for Coca-Cola. We have never advertised that we handle Koke and Dope, no more than talking. When I first went to Freed & Hass' there was about four gallons of Celery-Cola, if I am not mistaken. I do not know where it came from. We kept the syrup down stairs. We do not let anyone see it or know what syrup we are handling. We had a Coca-Cola clock in our place but it got out of fix and we put it back in the bookstore. I won't be sure whether any sample has been taken at our place recently on October 21, 1914, by a person asking for Coca-Cola, but there was

(Deposition of John R. Pardue.)

somewhere, it might have been before or around there that this gentleman came in and I tried to bet him about that syrup. I do not know who he was. He picked out Dope for Coca-Cola, he wanted Coca-Cola and Dope. It was along in the Fall of the year. He got a sample of Coca-Cola, that is the fellow there, he had a private talk with Mr. Freed in the office and then Mr. Freed came up and called for one of each. It was between [883] 2 and 4, it was along in the summer or fall of the year. I do not remember whether I was on duty about October 20, 1914. I do not remember a man coming to the fountain and asking for Coca-Cola syrup, and taking some away from him. We have two fountains. The two fountains come together, the draining board is here. Coca-Cola is the first jar on that fountain, and then strawberry, chocolate, lemon, orange, dope or koke, vanilla and simple syrup that is eight. We have another one over here, we have sixteen pumps on this and eight on this one. On this one first comes cherry then orange, dope or koke, lemon, chocolate, strawberry, pineapple and vanilla is eight. In "C" there is Pepsol. (Witness thereupon writes his name on the diagram.) Since I have been in business there at Freed & Haas' that Koke and Dope on the one hand and Coca-Cola on the other have been in separate containers. We have had this pump fountain where all the sixteen pumps are, we have had new pumps put in there, about two years ago, and on that last fountain, the reason there is no syrups in there when the pumps

get broke on this one, a spring may get worn out, we use the pump and get the old pumps and put them up there and it may be you will find strawberry, Coca-Cola, and Dope, there will be Dope put in Chocolate, there may be vanilla, or they are all mixed up. I do not think there is any labels at all, they are blank I think. We are told to be careful not to get the labels on Dope and Koke. Freed & Haas tell us when we get orders for Coca-Cola to give Coca-Cola, and when we get orders for Dope or Koke, or any of these Cola names, to give them the Dope syrup. When a fellow comes up and calls for a Root Beer, I have not got but one at this place, I have had more at other places, I say, "Do you take Hires' Root Beer?" They do not give instructions about other soft drinks. I am told the syrup of Koke and Dope is cheaper in price than Coca-Cola. We have a gentleman named Regan that works with us now. Mr. Freed and Mr. Haas are in the city. They do not attend the fountain regularly lately. Mr. Haas has bought out a new business at the Transfer station. Mr. [884] Fisher is general manager. Mr. Freed or Mr. Haas is generally there. They are around that fountain occasionally when anything happens or goes wrong. They stay most of the time around about the cigar case, fruit stand, candy case, maybe down stairs. I have calls for Hire's Root Beer which we handle. We give Hires Root Beer when Root Beer is called for because we have nothing else to give them. We ran out of Mayfield's product about two years ago, and served Coca-Cola

(Deposition of John R. Pardue.)

when Koke and Dope were called for. Our customers kicked about it. I think it was four days we were out of it. It is all one and the same drink, Koke and Dope. I do not know how these names Dope and Koke originated except the discussions about cocaine. Customers like Koke and Dope better and it is cheaper.

Redirect Examination.

We have more calls for just Root Beer than for Hire's Root Beer. Like you go up to a bar and call for a beer, there don't everyone go up to a bar and say give me a certain kind of a beer, they just say they want a glass of Root Beer. When people ask for Koke and Dope they want a cola drink, a stimulating drink. I think there is a Parke-Davis Root Beer or sarsaparilla weakened down as a root beer and Humphrey Smith makes a root beer—all extract people make one. I never heard anybody advertising strawberry flavoring in bottles, or advertising in the newspapers, drug-stores and around town that Bill Jones makes strawberry soda in bottles, at all soda-fountains. But people come and ask for that, strawberry soda, and lemon soda.

Recross-examination.

In ordering a drink of cola or koke, or dope, they come up and order and say "Give me a Koke or Dope," I do not know any more than they want some drink, a koke or a dope or a Coca-Cola. It makes mighty little difference. They want a cola drink, a stimulating drink. Customers tell me it is all a

(Deposition of John R. Pardue.)

dope, is all I know about it, and a dope will make you feel good, it will liven you up, it comes from stimulation.

Redirect Examination. **[885]**

A dope fiend is a fellow that takes dope, it is something that livens you up, makes you feel good, it is a drug. I have heard they have caffeine in them, or cocaine, a fein of some kind, a feine drink is all I can tell. (Complainant's Exhibit #4 to the testimony of John R. Pardue introduced, which is a diagram, showing the containers at the fountain of Freed & Haas.)

Deposition of W. F. Boylin, for Defendants.

W. F. BOYLIN.

Recross-examination.

(Exhibit #5 to this testimony shown.) We tore that out of our catalogue we used to mail out to our trade. I expect I can find a copy of the catalog, and I will give you that catalogue out of which that was torn. We made up this label (indicating the label at the lower right hand corner of page marked "Celery-Cola"). That catalog was issued about six years ago. The Celery-Cola was made for the Mayfield Company. (Exhibit #6 shown.) The cut was made about, either three or four years ago, it was made in the spring of either three or four years ago. That was made for the Mayfield Company also. (Exhibit #7 shown.) It was made twelve or thirteen years ago for the Mayfield Company. It was made by one of the engraving companies in the city.

(Deposition of W. F. Boylin.)

I ordered it made myself here in Nashville some twelve or thirteen years ago.

Mr. HIRSCH.—We will offer the catalog in evidence as complainant's Exhibit #9 it is agreed that it may be filed as Exhibit #9.

CORRECTION.—Mr. Boylin is 38 instead of 28 years of age.

Deposition of Max Bloomstein, for Defendants.

MAX BLOOMSTEIN.

Direct Examination.

Fifty-one years of age last December; reside in Nashville; lived here fifty-one years; engaged in the drug business. Have a soda-fountain at our drug-store. Our drug-store is located 506 and 508 Church street, in the shopping district. We handle Coca-Cola and Diehl's & Lord's Star-Cola, and Koke and Dope. I am about the fountain frequently and can hear the words our customers use in asking for the different drinks they want. If they want Coca-Cola a majority of them will say "Coca-Cola," and the words Koke and Dope are used very largely, generally [886] signifying that they want any stimulating drink, that has caffeine in it. Sometimes a man—if you are not drinking Coca-Cola, will call for the drink under that name, Koke or Dope, and generally it means just any of them. Any drink with caffeine, any stimulating drink is called for by the name of Koke or Dope. When a customer comes in to our soda-fountain and asks for a Koke or a Dope, right now he is served with Koke or

(Deposition of Max Bloomstein.)

Dope preparation made in Chattanooga. Before that was put on the market he was usually served with Star-Cola, made by Diehl & Lord. When a customer comes in and asks for a Koke or Dope and is served with Diehl & Lord's Star-Cola, I surely consider that I am giving him what he asked for. I have heard these words Koke and Dope from five to ten years, I cannot state exactly. The words Koke and Dope mean to me, any drink having caffeine or stimulant in them. I regard these names Koke and Dope as nicknames designating a class of drinks, rather than a specific drink. I cannot say just exactly where that slang koke and dope originated. I presume it originated because it just had the same effect. I have heard the word dope as applied to cocaine, to morphine and heroin before I ever heard it applied to the drink, quite a number of years ago. I have no way exactly of knowing how long. I have heard it applied to the drinks, but dope, seems to me to be something that stimulates or makes you feel a little better or a little different from what you ordinarily did, it was originally applied to morphine and cocaine because it temporarily rejuvenated a man and I think it was applied to Coca-Cola just after having been applied to the cocaine and morphine drugs, that is my idea. I have known ever since I have known drinks, just what was in them. I do not know whether the ordinary layman who drinks them knows what is in them, but I have always known why they stimulate and why they have that effect. There is caffeine in

(Deposition of Max Bloomstein.)

them. Caffeine is referred to by the public frequently as a dope. Each man seems to flavor his drink just a little different, and sometimes they try to make caffeine drink and do not, and if he had been drinking one particular make of caffeine drink time and [887] again and he was not served that particlar make of caffeine the next time I have occasionally had some one to remark that that was not just what he wanted.

Cross-examination.

I have been in the drug business thirty years, the name of my place is Max Bloomstein's Pharmacy. I worked about eleven months for some one else and have been in business for myself thirty years, for the first two years I was with a brother under the name of Bloomstein Brothers and since that time I have been in business for myself. I have known of Coca-Cola about twenty-seven years, it was not called dope then. My recollection is that dope was applied to Coca-Cola, it being the first of all these stimulating drinks, no doubt it was applied to it first. I cannot truthfully answer that question because I do not remember. There were quite a number of those drinks that sprung up, my best recollection is it was applied first to Coca-Cola. I have handled Coca-Cola since I bought a stock of goods from the Latham Richardson Drug Company twenty-seven years ago there was nearly a full barrel of Coca-Cola in that stock. I do not remember the color of that barrel. I remember it tasted like the old fashioned worm seed and the Company made a change in the flavoring

(Deposition of Max Bloomstein.)

and sent me another barrel to replace that. At that time it was nearly a full barrel. It came from Atlanta and it had been bought by my predecessor. My predecessor was the Latham Richardson Drug Company. I have been handling Star-Cola probably five years. I have been handling Koke and Dope about a year or such a matter. It comes to me labeled Koke and Dope. I changed to Koke and Dope because Koke and Dope are copyrighted names and I thought I was liable to indictment if I served anything else. When I was first approached to buy Koke and Dope I refused to buy it. I told them I had as many of those drinks as I wanted, and a card was handed me on which I saw that Koke and Dope were copyrighted. I immediately went to my soda dispenser and told both of them if anybody asked for Koke or Dope for them to be very particular and ask if they wanted Coca-Cola. I know [888] there are a whole lot of men out in the employ of the Coca-Cola Company and I did not want them to trap me. I am not particularly fond of lawsuits and for that reason I know if a man asked for a koke or a dope and knew of the Koke and Dope preparation, he wanted that. If he meant Coca-Cola he wanted them to give him Coca-Cola so I told my dispensers if anyone asked for Koke or Dope to ask the question, "Do you mean Coca-Cola?" Some did mean Coca-Cola and some did not mean Coca-Cola, but there were some of them that took offense at the question; "What do you mean, Coca-Cola?" Some says: "None of your damn

(Deposition of Max Bloomstein.)

business, you ought to have enough sense to know," or words to that effect. They became angry and at the end of two days my head dispenser said to me; "I think you had better not make us ask that," we are offending some of our customers, they seem to take offense." Because they all considered we should know what they wanted. It is pretty hard to know just what one will become offended at. That being the case I said we had better buy some Koke and Dope so when people called for Koke and Dope you can give it to them, and when they call for Coca-Cola you can give them Coca-Cola, and no one can be offended. I was very particular about the boys after that, cautioning them that if they called for Koke or Dope to give it to them, *and if they called for Koke or Dope to give it to them, and* if they called for Coca-Cola to give them that. If did not want to get into a lawsuit and that is why I first started it. That is one of the kind of cards that was handed to me, as well as I can remember (indicating a card known as Exhibit #9), stating on it that Dope and Koke were copyrighted names. That is the reason I made my change from selling Star-Cola when Coke and Dope were called for, to Kope and Dope when Koke or Dope is called for. I handled Coca-Cola before I did Star-Cola. I also handled Fletcher's cola that was a caffeine drink. There was a time I handled Coca-Cola and did not handle some similar drink to it. I do not remember there were very many calls for Koke and Dope at first, it has only been within the last few years

(Deposition of Max Bloomstein.)

that the slang has crept around [889] amongst the young people. The better class of people coming into the store do not call for Koke or Dope, they call for Coca-Cola if they want it. I gave them Coca-Cola when they called for a Dope or a Koke at that time. I changed it to Star-Cola because Star-Cola was considerably cheaper. Koke and Dope are cheaper than Coca-Cola.

Redirect Examination.

In speaking of writing, the Company in Atlanta about that first barrel of Coca-Cola, they told me they had just changed their formula and were putting the drink on the market that was a little pleasanter to the taste. I made the complaint that it tasted like worm seed, and I could not dispense it. I do not know whether it was because it was a little old, or the original taste or just what, I then received a letter in which they stated they had just changed the formula of their Coca-Cola and they would send me another barrel, which they did and I dispensed that, as it was I could not sell it, the people would not drink it. This specific product Koke and Dope has given satisfaction to my trade.

Recross-examination.

Referring to that correspondence with the Coca-Cola Company, all I know is it was signed by the Coca-Cola Company. (Exhibit #9 presented in evidence.)

Deposition of P. E. Johnson, for Defendants.

P. E. JOHNSON.

Direct Examination.

Twenty-one years of age; live at 504 Morton Street, Nashville, Tenn.; lived here all my life, business, engaged as soda dispenser at Warner Drug Company at the corner of the Square and Walker, 441 Public Square in Nashville, Tennessee. I have been a soda dispenser five years June 15, 1915. I was employed all that time at the Warner Drug Company. We dispense sodas of all different flavors. We dispense Coca-Cola and a black syrup called Dope. They used Fletcher's Cola and have used Diehl's Star-Cola. Customers use the cola drinks they want by asking for Koke, Dope or Coca-Cola. When customers come into our fountain and ask for a Koke or a Dope, we serve them Koke or Dope. When we **[890]** handled Fletcher's Cola and they asked for Koke or Dope we served Fletcher's Cola, and when we were handling Diehl's Star-Cola we served Diehl's. When I was serving those drinks in response to their request, I considered I was giving what they asked for. The name of Koke or Dope means fifty or a hundred, or more drinks in a class. They mean a class of drinks. I do not consider that when a man comes in to our fountain and asks for a Koke or a Dope that he is making a definite and specific request on me for Coca-Cola exclusively. Some of the Cola drinks I know of are Afri-Cola, Gay-Ola, Fletcher's Cola, Diehl's

(Deposition of P. E. Johnson.)

Cola. And I know there are a number of different ones on the market but I do not recall their names. I have heard these names, Koke and Dope applied to soda-fountain drinks since I have been going around and calling for drinks myself. I have known there were other cola drinks on the market besides Coca-Cola for about five years. The general color of these cola drinks are about the same. At the baseball park here in the summer time they serve Pepsin and Diehl's Star-Cola and the other drinks that run in that class. Diehl's Star-Cola is all that is advertised out there. The boys holler Star-Cola, Diehl's Star-Cola. I never drank any Star-Cola. It is about the same color taking the concentrated syrup and comparing the two, the beverage that is made from the syrup is about the same as Coca-Cola. If people ask for Koke or Dope at the ball park they get Diehl's Cola. When they get Diehl's Cola they know they are getting that because it is labeled.

Cross-examination.

I have nothing to do with the purchasing at all at Warner Drug Company. I have seen Coca-Cola barrels coming into the place all along since I have been down there. I have no idea from whom they purchase Coca-Cola. I see drays coming bringing them up there in the last two years since I have been back in the store, the Kiggin Transfer Company brings them. I have never seen any receipts for Coca-Cola. When I first went there I was assistant at the soda-fountain. I cleaned up and waited on

(Deposition of P. E. Johnson.)

trade, and I stayed there for about a year in that duty and I was [891] promoted to head of the soda-fountain and then my duties were to make syrup and see that things were kept clean and take charge of the business in general except the buying of the different goods that came in. I dispensed at that time. I was put in charge of the fountain about four years ago and I kept that up until about November, 1913. I still have charge of the fountain but went back in the store. I am assisstant register of prescriptions now but still have charge of the fountain and make relief watch at the fountain from twelve to one and five-thirty to six-thirty. If I work at night, six-thirty to nine. During last summer I forgot to state I was at the fountain. I was there in October, 1914. I was there on October 20th, at 7:15 P. M. I was not at 9:30 A. M., I don't think. On October 19th, which was Monday, my best recollection about it was that I was not dispensing. October 20th at 9:30 I do not think I was dispensing, but understand I do not make these statements as positive. At 7:15 P. M. on the 20th I was there. I do not know Mr. Hall Johnson. There is no other Johnson working at our place of business but there has been. To the best of my recollection from about the middle of January, 1914, till the middle of March, 1914, my brother was at the fountain. I am certain of that. I was the only Johnson connected with the Warner Drug Company, but there was not a dispenser there except myself by that name. I do not remember two gentlemen approaching our store on October 20th, at 9:10 P. M.,

(Deposition of P. E. Johnson.)

one asking to be served with Dope and another to be served with Coca-Cola, nor the one asking the dispenser to put enough Coca-Cola in a Thermos bottle, sufficient to make six glasses of Coca-Cola. I do not remember any such instance as that at all. I do not think I was at the soda-fountain at 12:10 P. M. on October 21, 1914. I do not remember two gentlemen calling at the fountain, one asking to be served with a Dope and another Coca-Cola. I do not remember any such instance at all. I remember someone coming in with a Thermos bottle and asking for syrup. I do not know when it was. I just remember of the Thermos bottle being there, I do not remember whether I filled it or not. [892] If he had told me at the time that you would ask me *able* it I might have been able to tell you. I do not remember anything about the conversation at all. I have been around calling for drinks about eight years. We keep a five-gallon can in the rear and keep the black syrup in that can. There is nothing on that five-gallon can, just a plain jacket can. The syrup comes out of the barrel the syrup comes in. I do not know what is on the barrel the syrup comes in. I do not know where the syrup and barrel comes from, either. By Koke and Dope I mean any product we might handle excepting Coca-Cola, in the way of Cola, Fletcher's Cola, Afri-Cola. We sell any besides Coca-Cola for Dope and Koke. We keep Coca-Cola all the time in one of the jars. Our fountain is at the Puffer Mfg. Co. just at present, since December 15, 1914. I will mark them, what they are flavored: "S"

(Deposition of P. E. Johnson.)

Strawberry; "P" Pineapple; "O" Orange; "Cher" Cherry. This is lemon, that is vanilla, that is cream, chocolate, plain, dope, and we keep Coca-Cola in a container back of the fountain. We have had this system about a month. Understand these are not like they are labeled, but like the syrups are in the jars. (Exhibit #10 introduced.) This the draft arm, it is in the center. There are ten on the dispensers' right. This first one was empty, I do not know exactly which jar it is. Call the fountain on the dispenser's left "A" and on the dispenser's right "B." Now, starting with the container at fountain A, the one on the dispenser's extreme left was empty, next to that I think sarsaparilla; the next one Pepsol, next I think Cherry Smash, next I think was empty, there might have been a little something in it. The next one was empty, the next empty, the next empty, the next empty, the next one that is in fountain A was Dope. On the extreme right was Orange in fountain "B," the next Pineapple, next Coca-Cola, next Lemon, next Vanilla, Cream, Chocolate, plain syrup, Cherry. The one on the extreme right I think was empty. The one at the dispenser's left was closest to the door. Prior to a month ago we did not keep Coca-Cola in "A" at all. We kept Coca-Cola at this time in Fountain "B," third container from [893] the dispenser's left. Prior to a month ago we served Dope and Koke from the #9 at my left. That was where it was usually taken from and if a man came in and asked for a Coca-Cola prior to a month ago we would serve him from my right, the one at fountain

(Deposition of P. E. Johnson.)

"B" that I have marked Coca-Cola. This method described in Exhibit #11, has been in vogue since I have been there except at times when some of the jars might have been sent back or the fountain was in repair, or in winter when we did not use but one end. Calls for Koke and Dope were served from one container and Coca-Cola out of the other, but I would not state positively all three were never served out of the same container.

Mr. LITTLETON.—I want to enter an objection to this line of cross-examination because there is nothing in this record to support the questions asked, there was nothing asked on direct examination about these matters and the plaintiff is making this witness his own witness and cross-examining his own witness on this feature and I further object to the form of questions as leading and as improper, and the cause not based on anything in the witness' direct examination.

Objection overruled and appeal prayed and granted.

When I went down there I was told that one was Dope and the other Coca-Cola. I was told to serve Dopes and Kokes and things like that from one end of the fountain and Coca-Cola from the other. When I went there and a man came in and asked for a Koke or a Dope I would not know what he wanted. There are so many so-called Kokes and Dopes on the market, and one specific Coca-Cola I would not know, I could not state positively what he might want but I imagine from the advertisements, etc., that he would

(Deposition of P. E. Johnson.)

call for Coca-Cola if he wanted Coca-Cola. I do not know what Dope and Koke meant to me eight years ago. I really did not think about it at the time. They never have since I have been at the Warner Drug Company served Coca-Cola when Dope or Koke is asked for so fas as I know, when Coca-Cola is called for at the Warner Drug Company they serve Coca-Cola. One container at our fountain was marked Coca-Cola, the one on the right. The one that had this dope in it, I think it was blank. Since a month ago the container having dope [894] in it is marked "Dope." We just sent them back to the manufacturer and asked them to engrave "Dope" on it. (Offered in evidence Exhibits 10 and 11 to the deposition of the witness of P. D. Johnson.)

The WITNESS.—I am going to sign these and state what they are to the best of my recollection.

Deposition of J. E. Dunn, for Defendants.

J. E. DUNN.

Direct Examination

Twenty-five years of age; live 1824 Nassau Street, Nashville, Tenn., have lived here all my life practically; engaged in the soda-water business with the Nashville Drug Company. I have a soda-fountain in our drug store and dispense practically everything in the line of soda waters. My occupation at that place is soda dispenser. I am head dispenser. I have worked at John & Paul Stumb's and The Ocean, Stumb's is 202 Fourth Avenue North, and The Ocean is 224 Fifth Avenue North, Nashville. I

(Deposition of J. E. Dunn.)

have been dispensing soda water off and on around seven or eight years. Star-Cola is about the only cola drink I have ever dispensed to amount to anything except Coca-Cola. I have known of other colas on the market ever since I have been in the business, and that has been about seven years. Some of the other cola drinks I know of are Fletcher's Cola, Star-Cola, Matther's Cola. Where I work now we dispense nothing but Coca-Cola. We do have and have had customers at the other places come into the soda-fountain and ask for a Dope or a Koke. When I was dispensing Star-Cola and they asked for Koke or a Dope I would give them Star-Cola because it was the only one I had and I considered I was giving them what they wanted, because they practically all knew what I had. I did not consider he had made a specific and definite request on me for Coca-Cola only, but it all depends upon who it is asks for it. My regular customers come in the store down here, they know I handle nothing but Coca-Cola. They come in and probably say, "Give me a shot in the arm" or a Koke or a Dope, or something like that. I know what they want, but if a stranger should come in and ask for a Koke or a Dope or a shot in the arm, I would not consider he had specifically asked for a Coca-Cola because he did not call for [895] Coca-Cola. If I do not have anything but Coca-Cola there I would give it to him, but if I had a substitute I would give it to him. The words Koke and Dope mean as applied to a soda-fountain beverage different kinds of drinks, all this kind of stuff that is trying

(Deposition of J. E. Dunn.)

to imitate Coca-Cola, it refers to the Dope drinks as a class.

Cross-examination.

We handled Coca-Cola exclusively. I regard these these other cola drinks as imitations used principally as substitutes. At our present store we handle nothing but Coca-Cola and in response to calls for Koke or Dope or a shot in the arm, I serve him with Coca-Cola and understand that is what he means the biggest portion of my time. They use those names as nicknames for genuine Coca-Cola.

Redirect Examination.

These other cola drinks are cheaper and they make a little more money on it. Some do not run anything else in the fountain but that. Some places running up-to-date fountains, and a man calls for Coca-Cola he does not know what he is getting, except at this place up here, and it is very seldom they call for Coca-Cola straight because practically everybody knew what we handled. If a man puts it in his place, and serves it to everybody that comes in, no matter what they call for, it would be a substitute, but if a man puts it in and has Coca-Cola with it, and if a man calls for the substitute drink give it to him, but unless he calls for the genuine stuff give it to him.

Recross-examination.

I have never seen a cola drink yet that I could not tell from Coca-Cola. To my knowledge the biggest proportion that drink Coca-Cola can tell. Probably they will not say anything at the fountain about it if they get a substitute, but they know it.

(Deposition of J. E. Dunn.)

Redirect Examination.

If a person asked for a Dope and I gave him this so-called substitute, if he was a stranger to me and I did not have a personal knowledge that he wanted Coca-Cola, I would consider I was giving him what he [896] wanted. You will find the biggest majority of dispensers that are serving two will do that.

Recross-examination.

They give themselves the benefit of the doubt, they don't care so long as they get the drink to him and make more money out of it.

Deposition of W. W. Randolph, for Defendants.

W. W. RANDOLPH.

Direct Examination.

Twenty years of age; live in Nashville, Tenn.; have dispensed soda water at Hoodenpile Drug Company in West Nashville; about a year, I guess. Some of the cola drinks that we have dispensed are Star-Cola, Mi-Cola, Pepsin Cola, and I guess about a dozen others. I do not remember the others. I have heard of about a dozen cola drinks on the market several years back, as well as I can remember, about eight years, anyway. In asking for the cola drinks at our fountain, customers most all the time call for Dope. When they call for dope I give them any of those cola drinks I happen to have at that time. I hear them ask for Koke and Dope. When customers come in and ask for a Koke or a Dope they want any of those colas unless they specify one certain drink.

(Deposition of W. W. Randolph.)

I do not regard the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. When a customer came in to our fountain while I was dispensing there and asked for a Koke or a Dope, I did not consider that he had made a specific and definite request on me for a Coca-Cola only. The color and taste of these different Cola drinks are all about the same. They dispense Cola drinks at the baseball park, they serve Diehl & Lord's cola there, that is served in bottles. They call for a Dope or a Koke or just any of those names in asking for it out there and are served with this Diehl & Lords Cola there. I never heard anyone object to it and say it is not what they wanted when they were served with it, on a call for a Koke or a Dope. We handled Coca-Cola at that time, too. When customers came in and asked for a Coca-Cola I gave them Coca-Cola.

Cross-examination.

The word Koke or Dope is used for all these drinks. I use it to apply [897] to these different drinks. I do not think they only mean Coca-Cola when they ask for a dope. If they call for a Dope they do not only mean Coca-Cola, they mean any line of these drinks. I do not suppose some of them mean Coca-Cola because any one of these drinks will stand for the same as Coca-Cola.

Deposition of W. H. Sidebottom, for Defendants.

W. H. SIDEBOTTOM.

Direct Examination.

Forty-nine years of age; live in Nashville, Tennessee; lived here nearly forty-nine years, practically all my life. Engaged in ice-cream, confectionery, soda water, restaurant and coffee. The name of my establishment is Skalowski's, located at 527 Church Street on the main business street. I have been in that class of business about thirty years or more. I knew Mr. J. C. Mayfield fifteen or eighteen years ago at Nashville and St. Louis. He was engaged in manufacturing of soda-fountain syrups. The name of some of the syrups he manufactured was Mayfield's Celery-Cola and another was Koke. My recollection is that we bought the syrup two ways, we got it ready for the fountain and then bought it in concentrated form. When we bought it in fountain syrup it came in large containers, either half-barrels or barrels, and when we bought the concentrated, I think it came in five-gallon kegs. There were labels on these kegs to indicate what it was. Each one was printed according to the way it was sold, the different packages were branded according to the invoice. The aerated beverage, made from syrup was put up in bottles. I do not remember now his place of business in Nashville, it was so far back I cannot remember. The taste of this drink from the beverage he was making was similar to all cola drinks. The Celery-Cola was similar to all cola drinks, with the exception of a little bit of celery taste. The Koke was Koke, a regular

(Deposition of W. M. Sidebottom.)

cola taste. The color of these two beverages were dark, very much the same as Coca-Cola. There are now a great many cola drinks on the market; the Celery-Cola, Star-Cola, Cola-Ade. I have known of cola drinks on the market to my best recollection, twenty-five or twenty-eight years, I guess. I have never seen a cola drink that was not the same general color. All cola drinks are very similar in taste. [898] At the establishment where I am now located we dispense Atlanta Coca-Cola, we dispense no others besides that. I have heard customers come in and ask for Dope or Koke, they did it every day. Fifteen or eighteen years ago when they came in and asked for Koke or Dope it depended upon the humor of the dispenser what he gave them, he would give them Coca-Cola or whatever kind of cola we may have on hand. My opinion is that Koke and Dope apply to any cola drink, and when a man comes into the soda-fountain and asks for a dope or koke I do not consider that he has made a definite and specific request for Coca-Cola but a cola drink, and that has been true for fifteen years, anyway. The firm of Dorider and Sidebottom, had the concessions at Glendale, and we dispensed, my recollection is, about three kinds of cola, Celery-Cola, Coca-Cola, and I think there was another cola on the market then. My impression is that we had three kinds of cola. Away back there if they asked for dope or koke we would give them either one we had. All the colas were labeled.

Cross-examination.

I have been with the Skalowski Confectionery

(Deposition of W. M. Sidebottom.)

Store about seven months. M. H. Skalowski is head of it. Right before that I was with The Union Ice Cream Company three years and seven months. Before that with Dorider & Sidebottom about twenty-one years. Dorider & Sidebottom were in business on Church Street here. When Coca-Cola is asked for at Dorider & Sidebottom's I served Coca-Cola. I guess we served most every drink on the market during that time. I remember serving Coca-Cola, very distinctly, and Celery-Cola, Kola-Ade and Koke and Dope, and many other things of that kind. I have known Mr. Mayfield for eighteen years, that is my best recollection. I do not know when he commenced manufacturing this product Koke, he was manufacturing Celery-Cola or Koke when I first knew him. The Cola was the first that I remember. It might have been fifteen or sixteen years, but my *impress* is that it was eighteen years. He was manufacturing in St. Louis. I remember buying some syrup from the Mayfield Company, Celery-Cola and cola. I remember seeing labels coming into our place of business [899] with the words Koke on them. We were doing business with them. I could not say just what year, as I stated before, my recollection is we were doing business with Mr. Mayfield about eighteen years ago, but whatever we bought came labeled, whatever it was. I would not say I went right down and saw the Koke or tag labeled on the barrel, but I know what we did buy was invoiced that way. I do not know exactly what year it was. It is my impression that we had products coming to us

(Deposition of W. M. Sidebottom.)

from Mr. Mayfield that was labeled Koke. I did not say it was in the barrel, it was marked according to the invoice, what I ordered. That is all I remember. My recollection is that we were buying two products at that time, one was Celery-Cola, I am positive about that, and we were buying one other, and my impression is it was Koke, but I would not swear positively. We got a cola and Celery-Cola. I knew Coca-Cola twenty-eight years ago, do not remember any others. I do not know where Mr. Mayfield's manufacturing plants are. My impression was it was in St. Louis, he may have had a bottling plant or a manufacturing plant here. I know he had a plant in St. Louis, I was there. We are serving Coca-Cola there at Skalowski's when people ask for dope or koke, and have been doing that ever since I have been there. I have charge of the ice-cream and catering and also the supplies for the fountain. I stay around the fountain, I have charge of the house in the morning.

Redirect Examination.

I remember the St. Louis Fair and it was back of that a good little while, during that time, that was during 1903, that was when I visited his place, during the World's Fair. I had been there buying these goods before that and when I got to St. Louis I saw the plant one day in passing and went down to see it.

Recross-examination.

I would not say eighteen years ago, if the Fair was in 1903, I would say twelve to fourteen years ago, I would say that. I remember some time twelve or fourteen years ago, ordering Koke or Celery-Cola

(Deposition of W. M. Sidebottom.)

from Mayfield's establishment, and that in response to those orders packages with Celery-Cola and Koke on them, came. My impression is they came from St. Louis. I did all the ordering. Twelve or fourteen years ago, I do not remember package or packages labeled K-O-K-E. They were marked so we [900] could tell whether it was Koke or Coca-Cola. That was spelled Koke. We were in business, as I stated, twenty—about twenty-one years, right down there. When we organized the Union Ice Cream Company four years ago we had every receipt, every bill, every check and every order-book that we had when we started business, and I built a bon-fire out in the rear of our place and I think it lasted two days. I guess we burned a ton and a half of papers, because the business was wound up and closed out, and we had no need for the stuff and did not want to hold it out. The word Koke was on the barrel twelve or fourteen years ago, that is my best recollection.

Deposition of J. M. Warren, Jr., for Defendants.

J. M. WARREN, JR.

Direct Examination.

Thirty-eight years of age; live in Nashville; lived here all my life. Engaged in the paint business, been engaged in that business eighteen years. I have sold paint to the Koke companies—Central Koke Company at Chattanooga and Southern Koke Company, New Orleans, and the Koke Company of Texas. I sold them red barrel paint. This paint I sold them has no particular name, only it is a

(Deposition of J. M. Warren, Jr.)

standard red, universally used by all concerns who have use for a paint on barrels and packages of that sort. It is the cheapest paint you can buy because the ingredients that go to make it up are the cheapest. Red oxide of iron and of course, oil. That has been a standard paint ever since I can remember, oh, eighteen years. That paint has been used mostly for painting barrels, cooperage and things of that kind. I sell it to all classes and trades, anyone that uses packages and barrels, we sell that paint to. I should judge 75 per cent of all paint that is used for barrels is red because it gives you more universal satisfaction and is a cheaper paint. There is a paint known as Coca-Cola red. Coca-Cola red is a very expensive red, used mostly, from my knowledge, in painting signs, bulletin boards, things like that. We have matched some paint called Coca-Cola red, sold to the local sign men here in town doing work for the Coca-Cola Company. This Coca-Cola red is a more expensive paint than this other one because it is a very durable red, a brighter **[901]** shade and a special shade. There is no comparison at all between the red paint I sell the Koke Companies compared with the color of the Coca-Cola red. One is a very bright vermillion and the other is a mineral paint, one is a manufactured article and the other a mineral dug out of the ground. The high-priced or Coca-Cola red is a manufactured and chemical paint. The colors are made from chemicals, a barrel painted Coca-Cola red, and another with the cheaper grade would look entirely different, you could distinguish

(Deposition of J. M. Warren, Jr.)

them in a minute. Coca-Cola red as I know it is a very bright shade of vermillion, and the other is what we call English Venetian red, a very much darker shade.

Cross-examination.

I have been making this paint for the Central Koke Company, the Southern Koke Company and the Koke Company of Texas about a year and a half. I believe you could get up a black barrel paint as cheap and as durable as the red. Coca-Cola red is a true shade, has a good rich tone to it where the other has a muddy color. I could tell them absolutely after I saw them, and the average person could, that is the signs, but not the barrels, they look alike.

Redirect Examination.

Our representative called on the Central Koke Company at Chattanooga, and in their conversation told him what kind of paint we had, etc., and he bought five gallons to try. Nothing whatever was said about the shade, he just bought five gallons of our standard red barrel paint and we sent it to him and since that time have been getting the orders. The price was the reason he bought from us probably. I think it was cheaper than the paint he had bought before.

Recross-examination.

The name of our concern is the Warren Paint & Color Company. The Coca-Cola people use on their barrels the regular standard English Venetian Paint. They do not buy from us but it is the same kind of

(Deposition of J. M. Warren, Jr.)

red, universal paint we all use, all manufacturers use, they look alike, and I could not tell the difference between them. They do not use **[902]** Coca-Cola red on the barrels to my knowledge.

Deposition of J. G. Booth, for Defendants.

J. G. BOOTH.

Direct Examination.

Nineteen years of age; live, Nashville, Tennessee; lived here all my life; business soda-dispenser. Have been soda-dispenser off and on probably three or four years. I have not been that long solid. Am engaged in dispensing soda now at Paul and John Stumbs, before that at Max Bloomstein's, and before that at The Ocean, and before that at Decker's, I think. We are dispensing Coca-Cola straight at the place where I am now working. I have known of Cola drinks ever since I have known the original Coca-Cola, I suppose it would be five or six years. Customers come into the soda-fountain and ask for a koke or a dope and call for lots of different names, as Koke, Dope, shot in the arm, shoot me, anything like that and Coca-Cola. When they ask for these names at Stumb's I give Coca-Cola, at the other places if they call for Dope there, as well as I can remember I give them something we had in the place of it. Maybe I would always have two pumps if they had anything else like that, and they would tell me if we had calls for Coca-Cola I was to give them Coca-Cola, and if they called for it straight that way, and then if they called for some other name

(Deposition of J. G. Booth.)

that we would not know for sure whether they wanted the straight Coca-Cola or some other drink, to shoot one of them to them. That is what they always told me to give. When a customer came into our place of business and asked for a Dope or a Koke I would think he was asking for a Dope or a Koke, there are so many different ones on the market, I would think he was asking for a class of drink instead of some specific drink. If he wanted the original Coca-Cola, if he is that particular about it, he ought to call for it under the real name of Coca-Cola and not a substitute name.

Cross-examination.

By a substitute name I mean Koke, Dope, shot in the arm. These other drinks are not substitutes for Coca-Cola, we would not tell them when we had calls for Coca-Cola. I do not think they are substitutes for **[903]** Coca-Cola. If a man comes in and calls for a Coca-Cola I always give him Coca-Cola, in fact, I never did meddle into the Company's business as to what they had there. I always knew which pump had the original Coca-Cola in it and which pump had something else. I also knew which one had Coca-Cola and which one had something else. I do not know that I meant anything but substitute names. There is Koke and there is a Dope. If they called for any one of those I would not think they wanted Coca-Cola because they said that. Sometimes they want Coca-Cola but it is not all the time I don't think. I would not consider Coca-Cola was the only cola drink manufactured. They look alike, taste

(Deposition of J. G. Booth.)

kind of alike. Some people could not tell the difference, but I could, and I have seen lots of people that can. My instructions were when they asked for a Dope or a Koke or a shot in the arm, to give some Cola drink. At some places they did not instruct me, I mean by instruct me, that they would not tell me they had substitutes, maybe they would and maybe they would not. If I did not get the syrup up I would not know. They put me there to sell over the counter and not to ask anything about what it was. Sometimes they had two pumps of different colas and at other places they did not have but one. They might not have had Coca-Cola so far as I know, and they might not have had Star-Cola, or Koke. I worked for Junger & Rusk and I did not serve any cola drink at all, any soft drink you wanted besides Coca-Cola and the cola drinks. I did not know all the people did not want Coca-Cola when they called for Koke or Dope, if they did they ought to have called for what they wanted. They did not say what they wanted and I just imagined that they did not. I did not know.

Deposition of J. B. Freed for Defendants.

J. B. FREED.

Direct Examination.

Forty-three years of age; live in Nashville, Tennessee, about twenty-seven years. Engaged in confectionery business at Transfer Station. Have been engaged in business there fourteen years this coming July. The name of our concern is Freed & Haas.

(Deposition of J. B. Freed.)

Our business has been the same during all that time. I knew Mr. J. C. Mayfield about thirteen years ago. First met him in Nashville. I knew him while he was living here. He was engaged in manufacturing syrups, Celery-Cola, and Koke. **[904]** We bought from him continuously since I began, about thirteen years ago. On the package that Koke came to us in, was marked "Koke," a little label on the head of the barrel. It was spelled "K-o-k-e." I have gotten the syrup from him in Nashville and in extract form from Birmingham, Alabama and St. Louis. When we got it in extract form before mixing it to make a drink we diluted it with a syrup. The packages, containers or barrels that we have gotten this extract from St. Louis and Birmingham in, have a label on them, a little piece of paper "Koke," I think it is kind of a "V" shape, or diamond shape. This syrup has always tasted about the same to me, all the time, I could not see any difference in it. It is somewhere near Coca-Cola, the color of the syrup and the extract are both the same color. The color of the drink made from this is the same thing, it has always been the same color and similar taste. We are still handling that same product and Coca-Cola too and always have during the past thirteen years, have never been without them.

Cross-examination.

We never substituted Koke for Coca-Cola, we sell them differently, and when a man comes and asks for a "Koke" I give him Koke. That is the instructions. All the boys working on the fountain have

(Deposition of J. B. Freed.)

to give Koke when they call for Koke. We have given those instructions ever since we have been in business. If a man comes in and wants Coca-Cola I give it to him. Koke and Dope are the same thing. I gave no instructions to the young men last night. Johnnie Perdue was talking to me last night and told me he had testified. I did not know he had been up here till he came back and told me. I talked with the dispenser that was on duty. I talk to him every night. Johnnie said you men wanted to find out where the Coca-Cola was. I said "There is Coca-Cola in this jar, and there has been Coca-Cola in this over here. There has been, but there is not just now." There has been Coca-Cola in there and you could not give a diagram of the fountain because you are liable to have Coca-Cola most anywhere. We buy our **[905]** Coca-Cola from Spurlock, Neal & Company, some. Some from Chicago, the Liquid Carbonic people out of Chicago. I do not remember the date when I bought from them. I bought from a dealer here some and other people in town.

Mr. LITTLETON.—I want to enter an objection to this form of cross-examination; there is nothing in the direct examination of the witness upon which this can be based and in asking those questions the plaintiff is making the witness the plaintiff's witness, and therefore it is improper cross-examination. It is improper to cross-examine his own witness on question not brought out in direct examination.

(Deposition of J. B. Freed.)

Exception overruled and appeal prayed and granted.

We bought from Spurlock, Neal & Company in 1913 and bought from some other in 1914. We bought from Spurlock, Neal & Company that is all I remember. I do not remember the amount, you have the record, I did not get it. I believe I bought as much as 100 gallons. We do not have a big sale for Coca-Cola at our fountain. I have more sales for the other. I tried Coca-Cola out straight on the fountain without the other and had a great many kicks. For just a day or two I had been without the other on the fountain and had nothing but Coca-Cola and I had a good many kicks. I never have been without Coca-Cola. I think I bought as much as 100 gallons from Spurlock, Neal. Their records will show. I think I bought more in 1914. I think I bought a barrel more in 1914 than 1913. Their records ought to speak the truth, I do not know. I think I bought more than one barrel from them in 1913. Since I have been in business we have had a separate container for this product, Koke, and Coca-Cola. My instructions to all my fountain boys, whenever we get a new man, is to tell him when a man calls for Coca-Cola to give him Coca-Cola, and if he calls for Dope or Koke, to give him other things the profits are better on, to always give them what they call for. That is on account of the profit. I am working for Freed & Haas, not the Coca-Cola Company. I have had the Coca-Cola Company representatives come there and take out a drink and

(Deposition of J. B. Freed.)

push a Coca-Cola **[906]** back and say it was not their drink. I said whenever they wanted to get a soft drink or a substitute, to call for it. I did not give it to them. I have always gone to the fountain and told the boys to set up two drinks, put one Coca-Cola and one Dope, and push the Coca-Cola to me and the Dope to the gentleman, and I would give him a wink and say "Drink this," then say to him, "Drink that," and for him to tell me which it was, and he would push the Koke back and say the other is the Dope. And I would give him a sample of the syrup out of each barrel so as to show which is Coca-Cola and the other Dope. Johnnie Perdue puts the syrup in the fountain. I guess he has been there six or seven years. I bought that barrel of Coca-Cola syrup in 1914 because I was about run out and wanted some of it. I am about run out again. I have not got more than three or four gallons in the house now, I don't believe. You look like the man that was down there talking to me, the one that pushed the Coca-Cola back. I had some Coca-Cola in the house at that time. I am not positive you are the man. I was under the impression I bought three barrels in 1913. If I have not done away with my bills, I can go back and find out, usually they are burnt up. I do all the buying in the fountain business. I bought all the syrup from Spurlock, Neal and Company in 1913 and 1914. Spurlock, Neal & Company is a reputable house. I believe they are true. I do not believe they would tell me anything else. I could not tell the number of gallons I

(Deposition of J. B. Freed.)

bought at any one time, to be positive. Since I have been in business for the past thirteen years we have kept Coca-Cola and Koke in different containers, not in the same ones all the time. Sometimes maybe a jar gets broken and I have to use my syrup in another jar. They are always separate and never to my knowledge has Coca-Cola, Dope and Koke been served out of the same container. When Dope or Koke is called for and I have Coca-Cola and haven't anything else, I give them Coca-Cola. I do not know exactly how much Koke I buy a year, I have not kept a record of it myself, the bookkeeper keeps a record of everything, I do not know how much **[907]** we handle. I am not willing to say right now because it is not anybody's business how much stuff I handle a year. I might buy a barrel of extract. I do not know. I buy the extract from the Koke Company. I buy Coca-Cola and Celery-Cola syrups. I have bought Koke syrup. I have gotten this Koke extract or syrup from Birmingham, Alabama and St. Louis, Missouri. Koke syrup, to the best of my knowledge, I have been getting that about seven or eight years, but Celery-Cola I bought in Nashville about thirteen years ago. I do not know whether the Koke label is a diamond or a "V" shape, I do not remember. That was seven or eight years ago. It is a diamond now. I do not think it is the same shape as it was then. I think it was this shape if I am not mistaken. (Witness writes his name on the paper containing the diagram Complainant's Exhibit No. 12.) I know at our place of business

(Deposition of J. B. Freed.)

where these different drinks are supposed to be kept. There are two other plungers on our fountain with Coca-Cola marked on them. I think strawberry is in one of them, sometimes we have to replace the jars which get broken at our fountain, and maybe there is one thing in it this morning and something breaks it and it is changed to something else in it, you cannot keep them labeled. We do not keep dope or koke in Coca-Cola containers. At the present time Coca-Cola is in them, the Coca-Cola has been there for a good long while. I ordered more Coca-Cola jars than I did any others, I expected to use more Coca-Cola jars. I did not do it, and I have taken one up and used it for strawberry, I believe. I ordered others with two jars, strawberry, orange, chocolate, lemon, all materials. I wanted to have it on each side of the fountain so as to have one on each side of the fountain, that is because I expected to use two boys, but we have not done it, we did not have to fix up but one. Our expectation did not come up on Coca-Cola or any of them. I have two of them but I have not used but one. I could not tell what jar we keep Dope and Koke in without I was down there. We might have dope on both sides of our fountain, at times they have it that way. I think [908] we kept it in the third jar from the draught on the right. I think that is where it is now. Sometimes we keep it on the other side and in the same position on the left. Coca-Cola is the fourth from that on the right at the present time, but I have had them set beside one another, one with Coca-Cola and

(Deposition of J. B. Freed.)

another with Dope on it, maybe one is in Orange and the other is in strawberry. Whenever we break a jar we have to move it. There are about four dispensers that work there, not all at once, in the winter-time sometimes not but one, sometimes have two in the winter-time and sometimes three in the summer-time, they change according to the seasons. Not all the containers are being used. The old men know where the containers are but a new man is always shown and learned, he has got to know where the stuff is on the fountain. I keep the Koke and Dope here on this side, and if it is broken, when that happens the man on the fountain knows it himself, he attends to it himself. If he has a jar he will put it back in the same position in another jar. At times when we only had Coca-Cola and they called for Koke or Dope, we give them Coca-Cola. I handle Koke and Dope because I make more money and people want it. We get five cents for a drink over our fountain of Coca-Cola, Dope or Koke. I think Koke and Dope is better and cheaper, I know it is a heavier syrup. The names of the soda-fountain dispensers are Johnnie Perdue, he doesn't stay on the fountain, he only tends to the syrup; Alfred Rankin, Leslie Roberts, and they are about the only ones I have at the present time on the soda-fountain, and all the other over there, they are not soda-fountain men, but they work there every now and then. They have not been with me very long, except Johnnie, the rest are practically new in the business. Off and on I discharge boys. If they

(Deposition of J. B. Freed.)

are not giving satisfaction, I change them. I do not know how many calls a day we have for Coca-Cola, I do not keep count of them, never have. I think there is a good deal more calls for Koke and Dope than for Coca-Cola. I would have to keep a record to find out, I am not so much at the fountain. I have heard people call for Dope, and Koke and Coca-Cola for the last thirteen years I have **[909]** been in business. Before I went with Freed & Haas I was in the whiskey business. I do not know how much Koke I bought in 1914, I could not tell you and be positive, I will say as much as a barrel, a twenty-five gallon barrel of extract, that will make 260 gallons net of syrup. Not all of it was sold over the fountain, I sold some syrup and dope extract, this last summer, sold it in syrup from over our fountain. A fellow came in that I sold, I don't know where they carried it to, or what they did with it. They call for "Dope Syrup," they have called for a little bottle of Coca-Cola syrup once in a while, every once in a while some one would come in and say "Give me a half pint of Coca-Cola syrup," that they would take it home to make a drink out of it.

I guess twenty thousand—I guess twenty—possibly; between that and twenty-five thousand passed through that transfer station a day. I might have sold more than that, I did not keep a record myself as to just how many gallons I have sold of it.

Redirect Examination.

I am not positive whether Celery-Cola, or Koke syrup I bought away from Nashville, but I know I

(Deposition of J. B. Freed.)

got Celery-Cola in Nashville and bought Koke away from Nashville in extract form. It seems to me the Celery-Cola was about the same thing as Koke, and the trade seemed to like Celery-Cola and Koke and Dope; they all tasted about the same. Coca-Cola representatives called on me within the last year or so. He was the gentleman who favors Mr. Hirsch very much. He wanted to know why I did not handle Coca-Cola. I said, "My friend, I do handle Coca-Cola, always have handled it." He said, "We called for Coca-Cola at your fountain and did not get it." I said, "Who did, that is something funny." He said he had done so. I said, "It is on the fountain and they have instructions to give it to the men that call for it." We were back in the office talking I said shortly, "Do you suppose you could tell the drink if you were to taste it?" He said, "Certainly I could." Well, I talked to him about fifteen minutes in there, **[910]** I guess, and I said, "Let's go out and have a drink." I went out and called for one of each, I said, "A Coca-Cola and a Dope." I said one of each. He said, "Give me a Coca-Cola." I said, "I called for Coca-Cola for you." And the boy sent me over the Coca-Cola. I said, "Don't offer him the Dope." He took the Dope and drank some of it, and I pushed over the Coca-Cola and he drank that, or part of it, and I said, "Now, which one is Coca-Cola?" He pushed the Coca-Cola back and set the Dope drink out and says, "That is the Coca-Cola." I says, "You are mistaken; this is the Coca-Cola you pushed back."

(Deposition of J. B. Freed.)

I said, "Johnnie, draw another out of the Coca-Cola there and give it to the gentleman." I said, "Does that taste like the one you pushed back?" Well, I don't remember whether he said it did or didn't. He said, "Would you give me a sample of the syrup?" I gave him a sample of the syrup out of the Coca-Cola jar and one out of the Dope jar, and I said to him, "Be sure you keep them separate and see which is which." I said, "See if I gave you Coca-Cola or Dope." There was something else said, when he first came he said to me, "I have got instructions—the Louisville attorneys have got instructions from Atlanta, there is a firm in Nashville by the name of Freed & Haas at the transfer station, down at the transfer station, who are handling substitutes for Coca-Cola, and they sent me over here to see if I could arrange matters. I said, "My friend, we do not handle substitutes, we handle both, Dope and Coca-Cola, and any time you come you will find it on the fountain." He also showed me a letter he had from the Atlanta people, Coca-Cola people, to the Louisville people in regard to this proceeding. He said they would have to take legal proceedings against us if we could not adjust matters in some way. I told them I was working for Freed & Haas and not the Coca-Cola people. He wanted to force me to handle Coca-Cola instead of Dope, that is the way I understood it, that was the way I took it to be. Then I told him that I had a great many more calls for Koke than for Coca-Cola, and that I had kicks on Coca-Cola. That I could prove that, that

(Deposition of J. B. Freed.)

he could stand by my fountain and I **[911]** would put on nothing but Coca-Cola and try it out, if he would come and stand there, but he did not do it. I bought the Celery-Cola from the Tennessee Bottling Works I know, but the Koke extract I did not buy from them, I may have bought Koke syrup from them. I do not remember about the Koke extract. My understanding is they were making syrup here then seven or eight years ago.

Deposition of J. M. Smith, for Defendants.

J. M. SMITH.

Direct Examination.

Twenty-five years of age; live 807 N. Second Street, Nashville, Tenn. Lived in Nashville about four years; engaged in the cigar, soda and lunch business at 318 Third Ave., North, Nashville, Tennessee. I have been in that business practically all my life; my father was in that business. I have a soda-fountain at my place of business. I do not dispense, I have a soda dispenser there all the time. I can hear the names customers use in asking for the drinks they want. I have been around a soda-fountain ever since I was large enough to work, fifteen or twenty years, fifteen years. I dispense everything that they sell over a soda-fountain, a general line of soda-fountain drinks, and the different kinds of Coca-Cola and other cola syrups. I have dispensed Gerst's Cola, Gao-Ola, Star-Cola, and now a new syrup, Cola drink, put up by the Southern Fountain Supply Company, I do not remember what they call it. Cus-

(Deposition of J. M. Smith.)

tomers calling for these cola drinks invariably ask for Dope. I have a good many customers who come in and ask for a Coca-Cola and some ask for Dope and some ask for Koke, and names like that. I give them when they ask for Dope or Koke, either Star-Cola or Gerst's Cola, or some one of these cola syrups. I have given Coca-Cola under the name of Dope or Koke, and sometimes I have happened not to have one in my fountain and I have the other; sometimes I do not have both and sometimes I will have both at the same time and if I have both syrups in my fountain invariably if a man asks for a Coca-Cola I give him Coca-Cola, but if he asks for a Dope or a Koke I give him one of my other cola drinks, whatever it might happen to be. When customers ask for dope or koke I understand it is any kind of [912] a cola drink, not a definite and specific request for Coca-Cola exclusively. I am now dispensing a cola syrup that is put up by the Southern Fountain Supply Company. I do not remember what they call it, it is put up by Mr. Matthews, I believe, it is a kind of cola syrup and also I am dispensing Coca-Cola. I call this cola syrup Dope. He sells it to me under that name. I understand Koke or Dope is attributable to any kind of cola drink as the way I understand. I have heard these words Koke and Dope applied to soda-fountain beverages ever since I can remember, or about fifteen years, something like that, I have been working in and around soda-fountains for about that length of time. The greater part of the time I have had other

(Deposition of J. M. Smith.)

cola syrups on the fountain as well as Coca-Cola syrups. I never had a customer reject any of the other cola drinks other than Coca-Cola when they have asked for it as Koke or Dope, and I served it to him in response to a request for Koke or Dope on the ground that it was not what he asked for. They serve Star-Cola at the ball park exclusively and have done so the last two or three seasons. They ask for it as Dope and they serve them Star-Cola. The taste of this Star-Cola is a kind of sarsaparilla taste. The taste of Star-Cola and Coca-Cola is different and there is a little difference in the color of the bottle and the way it is blown in the bottle from Coca-Cola bottles. Star-Cola is blown in the bottle. The boys call Star-Cola, then I have heard some men say give me a dope and they would sell them this Star-Cola they were peddling. This Matthew's Cola has a very strong sarsaparilla taste. It is not at all like Coca-Cola, Coca-Cola is sweeter. They ask for that drink as Dope, and I give that to them when they ask for Dope. I never had anyone kick on it or reject it. When customers ask for Koke or Dope I think they are asking for any kind of cola drink.